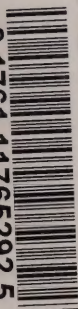


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A guide to industrial designs

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A GUIDE TO INDUSTRIAL DESIGNS



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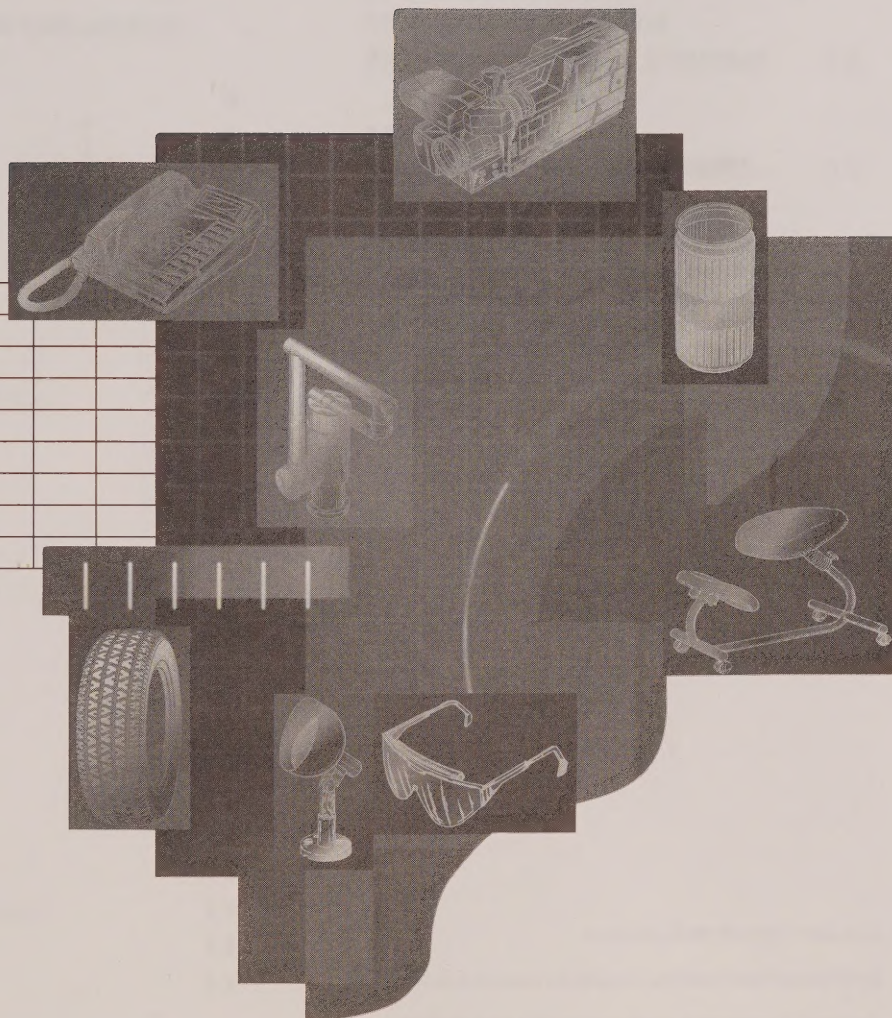
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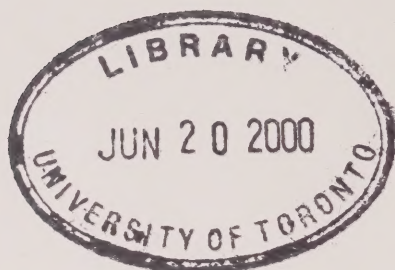
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A GUIDE TO INDUSTRIAL DESIGNS





The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be a legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Industrial Design Act*, the *Industrial Design Regulations*, and in decisions of the courts interpreting them.

A GUIDE TO INDUSTRIAL DESIGNS

Issued also in French under title: *Le guide des dessins industriels*

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INTRODUCTION

A well-designed chair is not just a pleasure to sit on, but a pleasure to look at as well. This can be said for almost every manufactured product: its success in the marketplace will depend not only on its functionality, but on its visual appeal as well. That is why manufacturers invest a great deal of money and know-how in industrial design and why an original design is considered valuable intellectual property.

If you are the creator of, or an investor in, an original industrial design, Canadian law offers you protection from unlawful imitation of your design. The *Industrial Design Act*, like other forms of intellectual property legislation, works to protect owners while promoting the orderly exchange of information. The way to obtain such protection is to register your design with the Canadian Industrial Design Office.

Your industrial design is worth a great deal in time and money, and it may mean the success of an entire enterprise. It pays to protect your intellectual property by knowing your rights and how to use them.

Purpose of this guide

In this guide we will look at what industrial designs are, what makes them “registerable,” the advantages of registration and how to go about it. Keep in mind

that this guide offers general information only and does not cover all the complex issues that may arise throughout the registration procedures. It should also be noted that this guide is not an authoritative guide on Canadian law regarding industrial design.

For exact definitions and detailed regulations, consult the *Industrial Design Act*, the *Industrial Design Regulations* and legal texts on intellectual property available in many libraries. The Canadian Industrial Design Office can also provide further information.

The Canadian Industrial Design Office

The office responsible for registering industrial designs is the Canadian Industrial Design Office. The Office is part of a larger agency called the Canadian Intellectual Property Office (CIPO), which is part of Industry Canada. In addition to industrial designs, CIPO is responsible for other forms of intellectual property. These are:

■ **patents**—cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention;

■ **copyrights**—provide protection for literary, artistic, dramatic and musical works (including computer programs), and three other subject-matter known as performances, communication signals and sound recordings;

■ **trade-marks**—are words, symbols, designs (or a combination of these), used to distinguish the wares and services of one person or organization from those of others in the marketplace;

■ **integrated circuit topographies**—are the three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs.

Visit CIPO's Web site

CIPO's Web site includes useful information about its product lines, services and legislative changes. The five intellectual property guides are available, as are interactive tools that explain intellectual property in an enjoyable way. You may visit our Web site at the following address:

<http://cipo.gc.ca>

Also, you can now submit your application electronically via our Web site.

What is an industrial design ?

An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. It may be, for example, the shape of a table or the shape and ornamentation of a spoon.

The design must have features that appeal to the eye and although the Design Office will not judge the aesthetic merit of those features, the Office will assess originality.

Other forms of intellectual property

People often confuse industrial designs with other forms of intellectual property.

A **copyright** is legal protection for an artistic endeavour. Often an industrial design is first created as a work of art, and as such, is originally protected by the *Copyright Act*. An artistic work is protected under the *Copyright Act* automatically, but a design is protected under the *Industrial Design Act* only if it is registered. Therefore, it may be a good idea to register your design, even if you have copyright protection for the original art. If you are in doubt about the appropriate course, it may be wise to consult a lawyer or a registered patent agent.

Patents are for new inventions or processes that offer innovative and useful functions. Canadian law regards the functional aspects and design aspects of articles quite separately. Therefore, you cannot list a function as an element of your industrial design. You may, however, be able to obtain a patent for your article's functional aspects and an industrial design for its aesthetic ones. Suppose you develop a new kind of folding chair. The way the chair folds, its lightweight construction, its strength and its durability are all functional qualities. The industrial design features could include the shape or configuration of the chair, and any patterns or ornamentation on it or any combination thereof.

Trade-marks are used to distinguish the goods or services of one person or organization from those of another. The shape of a product or its packaging can be an aspect that distinguishes it from someone else's product. You can register such a feature as an industrial design and later, in a separate process, as a trade-mark. Suppose, for example, you created a soft drink bottle with a unique shape. Initially, you could register this original shape with the Industrial Design Office, and later, once it has acquired distinctiveness, as a "distinguishing guise" (a type of trade-mark) with the Trade-marks Office. Keep in mind that for your bottle

to be considered a trade-mark, it must have been on the market for a sufficient period of time such that it has become recognized as *your* product (i.e. it distinguishes your product from others in the marketplace).

To be eligible for registration with the Industrial Design Office your design must be substantially original.

When to file an application

There is no time limit for filing an application as long as the design has never been published. The term "published" in this context means that the design has been made public (even to your neighbours) or offered for commercial sale or use anywhere in the world. It is best to file as quickly as possible if publication has occurred. You must file within twelve months of publication or you will lose your exclusive rights to the design.

In making a decision about whether your design can be registered, the Industrial Design Office may ask for further information. Such information may be needed if it appears that:

- the design is not applied to a fully assembled finished article or set;
- users will never see the article or design in the form disclosed by the application;
- the design features are dictated solely by how the article is used;
- the description portion of the application describes functional or manufacturing aspects rather than design features.

Why you should register

The advantage of registering your industrial design is that it gives you exclusive rights to your design. Registration enables you to prevent others from making, importing for trade or business, renting or selling or offering or exposing for sale or rent any article in respect of which the design is registered and to which the design or a design not differing substantially therefrom has been applied, for up to ten years from the date of registration. Keep in mind that, **unless you register your design**, you can make no legal claim of ownership and have no legal protection from imitation. This is different from trade-mark and copyright protection, which allow you to claim ownership even without registration.

Who can apply ?

Only the proprietor of a design may apply for and obtain registration for an industrial design. Usually, you are considered the proprietor if you have created the design. However, if you've been hired under contract to develop a design for someone else, then that person is the proprietor and is the only one entitled to apply for registration. If you work together with other people to create a design, you should file for

registration as joint proprietors (unless you are all working under contract or commission).

If you have acquired ownership of a design then you may apply.

If you are an employee of a company and develop a design as part of your employment, then the employer may be the proprietor. In that case only the employer may apply.

Industrial design registration is valid only if applied for and obtained in the name of the proprietor. You will save yourself time and expense by resolving the issue of ownership *before* applying for registration.

Before you file

You may come to the Industrial Design Office in Hull, Quebec, to conduct a search of Office records prior to filing an application to determine whether your design is truly new and original. The Office will explain search procedures to you but will not conduct the search for you. This will give you the opportunity to see other registered designs. You should also keep your design confidential.

What you cannot register

You cannot register the following under the *Industrial Design Act*:

- designs that are utilitarian only and which are not intended to provide visual appeal;
- designs that have no fixed appearance (for example, holograms);
- designs for components that are not clearly visible (for example, features that are hidden from view or features that are too small to have appeal to the eye);
- a method of construction;
- an idea;
- materials used in the construction of an article;
- the useful function of the article (see discussion of patents in section above); or
- colour (although one can protect a pattern that may be created by an arrangement of contrasting tones).

How long the process takes

Pursuant to a provision of the *Paris Convention*, an international treaty signed by Canada, the Office does not register any design until six months after the date of filing. Normally, it takes between eight and twelve months to have your application examined.

The Office examines applications on a first-come, first-served basis. If your application is properly prepared, registration will occur as quickly as possible. But if the application is not complete or incorrectly completed, the process will take longer, in which case the speed of registration will depend very much on how quickly you respond to queries, requests for changes, and other information from the Office.

You may be granted faster service if you believe that your design has already been imitated by someone else. In such a case, the Office will proceed with examination as soon as you notify the Office in writing, providing details of the infringement.

How long registration lasts

Registration is for a ten-year term beginning on the date of registration. However, before the expiry of five years from that date, a maintenance fee must be paid or the protection will cease. Once the ten-year term has expired, anyone is free to make, import, rent or sell etc., the design in Canada.

Fees

You must pay a fee to have your application examined by the Industrial Design Office. There are additional fees for maintenance and late payment of the

maintenance fee of designs. Fees are subject to change without notice. Payment may be made by VISA, MasterCard, Interac, cheque or money order made payable to the Receiver General for Canada. (For details about Fees, see page 15.)

Getting help with your application

You may file your own application for industrial design registration, and the Industrial Design Office will give you the basic information you need to do so. The Office will not, however, prepare your application or conduct a preliminary search of existing designs for you.

The Office will not express an opinion about the aesthetic or commercial merits of your design or tell you in advance of filing whether it qualifies for registration.

However, drafting an application requires much careful attention to detail and knowledge of the regulations. For this reason, you may hire a patent agent to prepare and “prosecute”, that is, to follow through on your application.

Most industrial design applications are done in this way. Patent agents are experienced in the field.

You may obtain a list of patent agents by contacting the

Canadian Intellectual Property Office. The Office will not recommend any particular agent and does not regulate their fees.

Preparing your application

An application for an industrial design has three basic elements which are required by the *Industrial Design Act* and *Industrial Design Regulations*:

- the application form;
- at least one drawing or photograph of the design; and
- the required fee(s).

In addition, foreign applicants must provide the name and address of someone in Canada who will act as their representative for service.

The application must be made in the form prescribed by the *Industrial Design Act* and *Industrial Design Regulations* which may be obtained free of charge from our CIPO Web site, from the Industrial Design Office or from your regional Industry Canada office. The Industrial Design Office will also provide you with a filing certificate. Samples of the various forms are shown at the end of this guide. If the applicant chooses to reproduce the application form, it must contain the same wording as the prescribed form.

The application form

You will find an example of a blank application form in Appendix B of this guide.

Remember the following important points when you complete your application:

- Only the current proprietor can file an application. The application form includes a declaration that you are the proprietor of the design and that, to your knowledge, no one else used the design before you or the first proprietor.
- Your application form must also include the name and complete address of the applicant, the title of the article, the description, and the name and address of a representative for service in Canada, for applicants who have no office or place of business in Canada.

- If you do not have enough room to complete your description on the first page of the application form, please continue on a separate sheet of paper. Do not finish the description on the back of the form.

Send the completed application to:

Industrial Design Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

Note: You can also submit your application electronically.

Any correspondence addressed to the Industrial Design Office at CIPO Headquarters in Hull and delivered:

- 1** During business hours to CIPO Headquarters, will be accorded the date of receipt that day.
- 2** During business hours to Industry Canada Headquarters or to one of its regional offices, will be accorded the date of receipt in that office*.
- 3** At any time electronically, including by facsimile, will be considered to be received on the day that it is transmitted, if received before midnight, local time, at CIPO Headquarters*.
- 4** Through the Registered Mail Service of the Canada Post Corporation (CPC), will be accorded the date stamped on the envelope by CPC*.

* Only if it is also a day on which CIPO Headquarters in Hull is open, if not, it will be considered received on the next working day.

The title

The application must include a title that identifies the finished article to which the design is applied. It should be the common name used in the trade (for example, "lighter", "chair", "spoon", "t-shirt").

The description

An industrial design is the features of shape, configuration, pattern or ornament (or a combination of these features) applied to a finished article of manufacture.

Your application must include a description which identifies the features that constitute the design.

The description, along with the drawings and title, must provide an accurate picture of the design. The following information must be clearly conveyed:

- the features of the design;
- the article of manufacture to which the design is applied.

Your description must clearly identify the features and where they reside in the article. Only visual features of the design are to be described, i.e., features of shape, configuration, pattern or ornament (or any combination of these features). It should not refer to how the article was made, what it is made of, how it functions, its size or its dimensions.

The design may reside in the entirety of the article, or just in a portion of the article. For example, you may wish to protect the shape of the entirety of a chair, or, you may wish to protect only the shape of the arms of a chair.

You may choose to provide a detailed description which accurately describes features in detail using geometric or similar descriptive terminology. For example: "The design consists of generally rectangular arms with a convex upper surface and concave lower surface, a longitudinal groove extending the entire length of each arm on the outer side edges."

Or, you may choose to provide a brief description which simply but clearly states what the design is comprised of by identifying the features and indicating if such features reside in the entire article or just in a portion of the article. For example: a) "The design consists of the features of shape of the arms of the chair as shown in the drawings." b) "The design consists of the features of shape, configuration, pattern and ornamentation of the entire chair as shown in the drawings." (See the Office Practice Notice on "Descriptions" for more examples.)

Figure reference: Where the drawings or photographs contain more than one figure, a figure reference should be included at the end of the description. It serves to identify what view is seen in each figure. For example: "Figure 1 is a bottom view of the chair."

Keep in mind that you or your agent are responsible for giving an accurate, adequate description

of your design and to ensure that it covers all of the original features of your design. The Industrial Design Office will only ensure, for the purposes of assessing registrability, that your wording is clear in conveying what the design consists of and that it accurately reflects what is shown in the drawings or photographs.

Specific things to keep in mind when writing your description:

■ Reference should only be made to **visual** features, and not to features of function or construction. For example, a distinctive tread on the sole of a boot may have functional properties (to prevent slipping) as well as visual appeal (it's in the shape of a snowflake).

■ It is acceptable to highlight particularly significant features for emphasis. For example: "The design consists of the features of shape of the arms of the chair as shown in the drawings. The most significant feature is the diamond shaped recess on the top surface of each arm."

■ Whichever method you use to describe your design, it must be clear whether the features reside in the entire article or just a portion of the article.

■ Since the courts may use your description to help determine the limits of protection for your design, you should word your description with care and

precision. If your description is too broad, you may over-extend the scope of the design, and it may be impossible to enforce. If it is too narrow, you may limit the scope of the design or leave out features that you intended to protect.

■ More information on how to write descriptions is contained in the Office Practice Notice on “Descriptions” which is available on CIPO’s Web site and copies can also be obtained from the Industrial Design Office.

Drawings and photographs

Your application must include at least one drawing or photograph of the design as applied to the finished article of manufacture.

The title, description and drawings must provide an accurate picture of the design.

A) Colour, size and quality:

Drawings must be in clear, permanent black lines on white paper. Photographs must be black and white. Colour will not be accepted. However, it is acceptable to show contrasting tone, or to use shading to give a better sense of the shape or contour.

Each sheet must be at least 21 cm x 28 cm (8” x 11”), but not more than 22 cm x 35 cm (8 1/2” x 14”). A 2.54 cm one-inch space must be left at the top and left-hand margins of each sheet.

Drawings or photographs must **not** be mounted on any other paper or surface and must be of sufficient quality for clear reproduction by photography, electrostatic processes, photo offset and microfilming. The features of the design as identified in the description portion of the application must be shown clearly and accurately.

B) Scale and orientation:

All drawings must be sufficiently large so that all features of the design are clear and apparent.

Generally, it is appropriate that all views have the same scale (except for enlargement views) and that all views appearing on the same page are oriented the same way.

Usually, the views are arranged so that the top of each view is oriented towards the top of the page. Another option, however, is to turn the page sideways and present all views with the top oriented towards one side.

Different views must not overlap each other.

C) Content:

All views in the drawings or photographs must show the **complete** finished article in isolation. The article must be shown alone against a neutral (blank) background. Your drawing(s) or photograph(s) should show every feature of the design as applied to the article. You may use stippled or broken lines to disclose portions of the article that are not part of the

design, but **the design must be shown in solid lines.**

Stippled lines must **not** be used to show:

- hidden portions of the article;
- indefinite length (exception: fabric and paper products);
- a position movement of the article;
- open position of the article;
- separation of pieces of the article.

The title, descriptive matter, dimensions or names should not be included on the drawing, but you may put your signature (as proprietor) on the lower right-hand corner of each sheet.

D) Number and type of views:

Your drawings or photographs should include as many views as are necessary to adequately disclose the features of the design. The Office will request removal of unnecessary or extraneous views which would merely clutter the Register. The conventional views are: perspective, front, back, top, bottom, right side, left side.

Each view should be numbered. They are usually referred to as: Figure 1, Figure 2, etc. (*When the drawings or photographs contain more than one figure, detailed figure references should be provided at the end of the description which indicate which view is seen in each figure, e.g., “Figure 1 is a perspective view of the design.”*)

E) Miscellaneous views:

Occasionally, you will need to include the following views to adequately disclose features that cannot be shown in the conventional views: views showing open and closed positions, cross-sectional views, fragmentary views, views showing indefinite length and repeat patterns.

Your drawings or photographs may show views of the article in both open and closed positions or in extended and retracted positions if such views are necessary to reveal design features referred to in the description and if the article is normally seen and used in these different positions.

You may present cross-sectional or fragmentary views if this is necessary to show the exterior profile of the article not seen in other views. Indicate the exposed cut surface by oblique parallel sectional lines in the cross-sectional view. Always show where such views are taken from on the complete article. Do not use symbolic section lines to suggest a specific type of material. Indefinite length is shown by illustrating a break in the article dividing it into two portions.

If your article is made up of a number of components, the drawings or photographs should show the completely assembled article. Do not present exploded views.

Remember the purpose of the drawings or photographs is to show clearly and accurately the features of the design. More information on the requirements for drawings and photographs is available in the Office Practice Notices and the Industrial Design Examination Procedures Manual which are available on CIPO's Web site or may be obtained from the Industrial Design Office.

Sample drawings

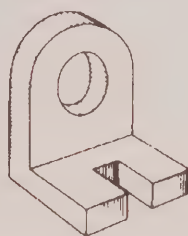


Fig. 1

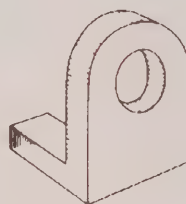


Fig. 2

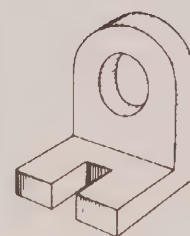


Fig. 3

(Perspective views)



Fig. 4
(side)

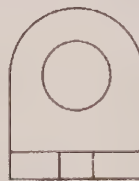


Fig. 5
(front)



Fig. 6
(top)

Variants of the same design

Each industrial design application must be limited to a single design or to “variants”. Variants are designs which do not differ substantially from one another. To be accepted as variants, the designs must be applied to the same article, and must possess the described features without substantial variation. You may add variants of the design to your application any time before registration.

If you include designs in one application that differ to a substantial degree, an objection will be issued. You will be asked by the Industrial Design Office to choose one design and delete the rest from the application. You would then have the option to file a new application (with filing fee) for any design deleted from the initial application. In this case the filing date of the new application will be the same as the original application.

It is also important to remember that if you make amendments to your description or drawings after filing the application, you may not change the design in any substantial way. If you do, the new description or drawings will be rejected. If you wanted to proceed with the amended design, you would have to submit a new application which would receive a new filing date.

The process of obtaining a design registration is made up of three distinct phases:

- initial processing (when you first file the application);
- examination (eight to twelve months after filing);
- registration.

Initial processing

Your application will undergo a preliminary review by staff to ensure that basic administrative requirements have been met. If the application is complete a filing certificate will be issued; this is merely an acknowledgment that the application has been received and processed and a filing date issued. It also gives you the number assigned to your application so that you can refer to that number in later correspondence. If the application is incomplete you will also receive a report, advising you of what is required to complete it.

Every report issued by the Office will give a due date for reply. If you do not reply by that due date your application will be placed in the inactive files.

Examination

The first step in this phase of the process is the classification of your application according to the particular type of article to which

it relates. This is followed by a formal assessment by an examiner who will study your application and drawings or photographs. These will then be compared with previously registered Canadian designs and designs published anywhere in the world to ensure that your design is original and registrable. Your design cannot be the same or similar to a design already applied to a similar article of manufacture. The wording of the description will also be considered to see that it accurately and adequately describes the design features shown in the drawings. Following this assessment the examiner will either allow (approve) the application for registration or issue a report. The report will outline the examiner's findings and tell you what information or amendments are required.

Amendment

If the examiner does express objections about your application, you should respond by providing the information or making the suggested amendments. Do not think that you must abandon your application simply because an objection has been raised. If you do not understand the report completely, call the examiner for clarification. The telephone number will be given on the report. You will have four months to reply to the report, otherwise

your application will be considered abandoned. If this occurs, you can request that your application be reinstated and include a reply to the examiner's report.

Appeals

If you cannot satisfy the concerns expressed in the examiner's report, your application will be deemed unregistrable in a final report issued by the Office. You may appeal this final report to the Patent Appeal Board which will make recommendations to the Commissioner of Patents who will either reverse the Office decision or reaffirm it in a final rejection. If you are still not satisfied, you may appeal the final rejection to the Federal Court of Canada whose decisions are appealable, in turn, to the Supreme Court of Canada.

Conflicts

Should different people apply to register essentially the same design, the Industrial Design Office will examine the applications on a first-come, first-served basis. The application with the earlier filing date (either the Canadian filing date, or the Convention priority date, if filed earlier in another country) will be registered.

Requests for delayed registration

It is possible that you may want to delay registration. For example, you may wish to allow time to market or file your design outside Canada. In this case, you should inform the Office in writing. You may exercise the option to delay registration at the time of filing your application or at any time before it is registered.

agent and may be made at any time during the first five-year period. After the five-year point, a six-month grace period exists during which maintenance may still be requested but this requires payment of an additional fee. Your request should identify the registration by number, title and name of proprietor. (For details about Fees, see page 15.)

Registration

Once approved by the examiner your design will be registered as soon as possible provided you have not requested delayed registration. You will receive a certificate of registration which includes the application and the drawings of the registered design. This certificate is evidence of ownership and the originality of your design and gives you the exclusive right to make, import for trade or business, rent or sell or expose for sale or rent in Canada, any article in respect of which the design is registered and to which the design is applied.

Duration

Registered designs are valid for ten years from the date of registration subject to payment of a maintenance fee. That fee shall be paid by the registered proprietor or by the proprietor's

Marking a product

You do not have to mark your design in order to indicate that it is registered as a design, but marking does give you extra protection. The proper mark is a capital "D" inside a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.

If your product is marked in this way, a court could award a remedy, such as financial compensation, in the event that someone is charged and found to be "infringing" (i.e. violating) your design. If there is no such mark, the court cannot award a remedy other than forbidding the other party from using your design (an "injunction").

Enforcing your rights

As proprietor, you may take legal action against anyone who infringes your design in Canada. It is your responsibility to take such action and you must do so within three years of the alleged infringement. The Industrial Design Office will not assist in legal proceedings on your behalf or police your rights in any way.

Marketing rights

As the proprietor of a registered industrial design, you have the exclusive right in Canada to

make, import for trade or business, rent or sell a product incorporating that or a similar design. You may also sell all or some of your rights to others (this is referred to as an assignment) or, you can simply authorize others to use the design subject to stated conditions (this is referred to as a licence).

Assignments

An "assignment" occurs when you sell all or part of your rights in the design permanently to another party. This party, or "assignee," assumes your ownership rights to make, import for trade or business, rent or sell, etc., products incorporating the registered design and to authorize others to do so. Usually, the arrangement involves an exchange of money. The assignment must be in writing but there are no prescribed forms for this. You may wish to seek the assistance of a lawyer in the preparation of assignment documents.

The new owner should ensure that the assignment is recorded with the Industrial Design Office. This is done by sending in a copy of the assignment document along with the fee. (For details about Fees, see page 15.) Recording the assignment allows the new owner to sue for damages if anyone infringes the design.

Assignments may be recorded against pending or registered designs. When recorded against a pending design, a new application form in the name of the new owner must be filed.

Licences

In some cases financial benefit can come from licensing the design. When you license your design, you allow someone else to use it in accordance with the particular terms and conditions set out in the licence agreement which are negotiated between the parties. In this case you retain ownership and, you can, in some instances, license more than one party. You may, for example, license one party for Western Canada, another for Ontario and Quebec and still another for the Maritimes. Similarly, you could have an exclusive licence with one party for the first five years and another licence with a different party for the second five-year period. As with assignments, licences should be registered.

You may wish to seek the advice of a lawyer if arranging a licence agreement.

Note: If you wish to seek out Canadian manufacturers who might be interested in buying, licensing or leasing your design rights, two publications would be useful: the *Canadian Trade Index*,

issued by the Canadian Manufacturers' Association, Toronto; and *Fraser's Canadian Trade Directory*. Both are available in public libraries.

Registration outside Canada

Registering your design with the Canadian Industrial Design Office gives you exclusive rights in Canada only. To enjoy similar rights abroad, you must apply for them in each country separately. Most industrialized countries have equivalent industrial design protection. A list of our foreign counterparts is available from the Industrial Design Office.

The United States uses the term “design patent” to describe what roughly corresponds to the Canadian registered industrial design. Be careful not to confuse U.S. design patents with utility patents for inventions.

Procedures for obtaining international design rights are partially governed by an international treaty called the *Paris Convention for the Protection of Industrial Property*. The *Paris Convention*, which has some 90 member countries, including Canada, allows applicants to invoke what is called “convention priority”. This means that someone who has filed for design registration in one Convention country has six

months in which to file an application for the design in another country and be accorded the same rights as if he or she had filed in the second country on the original filing date.

Suppose, for example, you apply to register a design in Canada on January 5, 2000. You then have until July 5, 2000, to file for design rights in any other Convention country and claim convention priority in that country.

It is important to note that in some countries your application could be rejected if you or someone else has previously registered the design. To assist owners of designs in Canada in avoiding this unusual situation, the Canadian Industrial Design Office gives applicants the option of delaying registration so that their application in another country can proceed at the same time as their application in Canada.

FOR MORE INFORMATION

The *Industrial Design Act* and *Industrial Design Regulations* detail the regulations that govern design rights. For electronic access: <http://canada.justice.gc.ca>

To obtain paper copies, contact:

Canadian Government
Publishing
Public Works and Government
Services Canada
Ottawa, Ontario
K1A 0S9

Tel.: (819) 956-4800
1-800-635-7943
Fax: (819) 994-1498

or any bookstore that sells
federal government publications.

Anyone may, without charge or request for permission, reproduce enactments and consolidations of enactments of the Government of Canada, and decisions and reasons for decisions of federally-constituted courts and administrative tribunals, provided due diligence is exercised in ensuring the accuracy of the materials reproduced and the reproduction is not represented as an official version.

You can also consult or obtain guides similar to this one on other kinds of intellectual property (e.g. patent, trade-mark, copyright, and integrated circuit topography), on our Web site or directly from the Canadian Intellectual Property Office. It may be useful to consult these guides to ensure that your work can be protected under the *Industrial Design Act* rather than copyright, trade-mark or patent laws.

For more information contact us through our Web site or contact the nearest regional Industry Canada office (shown in the blue pages of your telephone directory), or write to:

Industrial Design Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

Should you wish to obtain information on Industrial Design by telephone, call (819) 997-1936.

Fee Schedule

1. Examination of an application to register a design pursuant to subsection 4(1) of the Act _____ \$ 160
2. Maintenance of a registration of a design pursuant to subsection 18(1) _____ \$ 215
3. Supplementary fee for the application for maintenance of a registration of a design pursuant to subsection 18(2) _____ \$ 35
4. Examination of an application to register an assignment, or any other document affecting a design, including registering the assignment, or other document and issuing a certificate of registration thereof pursuant to subsection 13(1) of the Act
 - (a) for the first design referred to in the assignment, or in the other document; and _____ \$ 35
 - (b) for each additional design referred to in the assignment, or in the other document _____ \$ 15
5. Providing copies of or extracts from the Register of Industrial Designs, or copies of certificates, drawings, drawn copies of designs or other documents
 - (a) for each photocopied page; and _____ \$ 0.50
 - (b) for each typed page _____ \$ 5
6. Certification of documents _____ \$ 15

NOTE: YOU DO NOT NEED TO ADD ANY TAXES TO THESE FEES.

APPENDIX A - COMMON QUESTIONS ABOUT INDUSTRIAL DESIGNS

Q1. What is an industrial design ?

A. *An industrial design is the features of shape, configuration, pattern or ornament (or any combination thereof) applied to a finished article. It may be, for example, the shape of a table or the ornamentation on the handle of a spoon. The article can be made by hand, tool or machine.*

Q2. Must I register my industrial design in order to be protected ?

A. *Yes, there is no protection without registration. Once registered, industrial designs are available for public inspection. Keep in mind that it is best to apply for registration before marketing your product. If your design is an artistic work, it is automatically protected by a copyright, and you can register it as such. However, if you use the design as a model or pattern to produce 50 or more manufactured articles, you can protect it only by an industrial design registration.*

Q3. How long does registration last ?

A. *Obtaining registration for an industrial design will give you exclusive rights for a period of ten years from the date of registration, subject to payment of a maintenance fee during the first five years.*

Q4. What cannot be protected by an industrial design ?

A. *The following cannot be protected:*

■ *a manufacturing process;*

■ *functional features of an article;*

■ *a principle of construction, or how an article is built;*

■ *the materials used in the construction of an article;*

■ *the useful purpose the design is intended to serve or does serve;*

■ *colour per se; or*

■ *ideas.*

Q5. Can I register my design as an artistic work under the Copyright Act ?

A. *If your design was originally created as a work of art, it would have been protected automatically under the Copyright Act. But once you use it, or intend to use it, as a model or pattern to produce more than 50 single useful articles or sets of articles, it usually is considered to be an industrial design, which can only be protected under the Industrial Design Act. Since the legal distinction is a fine one, it is advisable to seek legal advice on this matter (as there are some exceptions to the preceding).*

Q6. If I register my design in Canada, am I protected in other countries ?

A. *No. You can obtain protection in other countries only by filing in each country separately.*

Q7. Is there a time limit for filing an application for registration ?

A. *No, unless there has been "publication" (i.e. the design has been made public or offered for commercial sale or use anywhere in the world). In that case, you must file an application within twelve months of the publication date.*

Q8. What do I need in order to apply for industrial design registration ?

A. *You should send in a completed application form, at least one drawing or photograph and the fee. Your application must be in accordance with the form entitled "Application for Registration of a Design," which is included in Appendix B of this guide. Electronic filing is also possible via our Web site.*

Q9. What type of description do I need to include ?

A. *The description does not have to detail every aspect of the design, but it must state clearly what the design is and what its original features are. You should describe the visual aspects of the design only, i.e., shape, configuration, pattern or ornament (or any combination thereof). Do not refer to how the article functions or performs. For a more detailed explanation of descriptions consult the "Practice Notice on Descriptions" available on the Web site or from the Office.*

Q10. What type of drawings or photographs are necessary ?

A. Whether you submit drawings or photographs, they must be in black and white, on good quality paper or photographic paper respectively, at least 21 cm x 28 cm (8" x 11") and not more than 22 cm x 35 cm (8 1/2" x 14"). They must show the design features clearly and be easy to reproduce by photography, electrostatic processes, photo offset and microfilming.

Q11. If I have a registered design, do I have to put any marking on the articles to indicate this ?

A. Marking is not required. However, it is helpful in the event of a court proceeding. If there is no mark, the court cannot award a remedy other than an injunction, which will prevent further infringement on your design. The proper mark is a capital "D" in a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.

Q12. If I see a good design outside Canada and it does not appear to be on the market in Canada, can I register that design under my name here ?

A. Yes, if you have acquired ownership of the design and it has not been published anywhere in the world for more than one year.

Q13. How will the Industrial Design Office know if I did not originate the design ?

A. The examiner searches through records of registered Canadian designs and published designs from any source to determine whether anyone else already owns the design, or one so similar that yours would be considered an imitation. If so, your application will not be acceptable for registration. If the search does not disclose a similar design, your declaration of originality will be accepted and the design registered provided all other requirements are met. It should also be noted that the courts have the power to overturn an invalid declaration at a later date.

Q14. Can anyone make a search through the Industrial Design Office records to see what has been registered previously ?

A. Yes, anyone can conduct a search free of charge. All materials are located in the Industrial Design Office, in Hull, Quebec. Design Office staff will give you the basic information you need to do the search. You may also obtain copies of drawings and other documents at a nominal fee (see the previous section entitled Fees).

Q15. May non-Canadians register their designs in Canada ?

A. Yes, provided that Canadian requirements are met.

Registrations of other countries offer no protection in Canada although they may be used as prior art when searching originality.

Q16. If I sell or purchase rights to a design, do I need to inform the Industrial Design Office ?

A. It is advisable to register the sale of rights, or "assignment," as it is known, with the Industrial Design Office. Many legal text writers have expressed the opinion that registration of an assignment would be necessary before the new owner could sue anyone for infringing the design.

Q17. Would the Industrial Design Office stop someone else from infringing my design ?

A. No. This responsibility rests with the owner of the design. You must start any legal action within three years of the alleged offence.

Q18. Can I get help in filing an application for industrial design protection ?

A. Yes. The Industrial Design Office will give you information on procedures for filing an application. Also, there are registered patent agents you can consult who have experience in this area. Look for them in the yellow pages of the telephone book under "Patent Agents", or write to the Industrial Design Office (see section entitled "For more information").

APPENDIX B - INDUSTRIAL DESIGN FORMS



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**Canadian
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An Agency of
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Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Hull (Québec) K1A 0C9
Téléphone : (819) 997-1725
Télécopieur : (819) 953-6977

Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-1725
Facsimile: (819) 953-6977

PARTIE A- CERTIFICAT DE DÉPÔT DESSIN INDUSTRIEL

PART A - INDUSTRIAL DESIGN FILING CERTIFICATE

Nom et adresse du demandeur ou agent - Name and address of applicant or agent

N° de référence du client - Client's reference no.

Nom du demandeur - Name of applicant	Pays - Country
Article fabriqué - Article of manufacture	

☐ Le demandeur revendique une priorité conventionnelle relativement à une demande à l'étranger :
Applicant claims convention priority on the basis of the following foreign application:

Pays - Country	Date A - Y M J - D	N° de la demande - Application no.
----------------	-----------------------------	------------------------------------

À L'USAGE DU MINISTÈRE SEULEMENT - FOR DEPARTMENTAL USE ONLY			
N° de la demande - Application no.	Date de dépôt Filing date	Priorité conventionnelle revendiquée Convention priority claimed	Approuvée - Approved
	A - Y M J - D	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Motif - Reason			

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PARTIE B - LISTE DE CONTRÔLE

Ci-joint les documents et les droits perçus

PART B - CHECKLIST

The following papers and fees are enclosed

- ☐ Formule de demande
Application form
- ☐ Dessins / photographies
Drawings / photographs
- ☐ Officiels
Formal
- ☐ Non-officiels
Informal
- ☐ Droits pour l'examen
Fees for examination
- Montant
Amount \$ _____
- ☐ Autres droits
Other fees
- Montant
Amount \$ _____

REMARQUES - REMARKS	
Personne-ressource - Contact person	
N° de téléphone - Telephone no.	Date A - Y M J - D

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Direction du droit d'auteur
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Design Branch
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50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-1725
Facsimile: (819) 953-6977

**DEMANDE D'ENREGISTREMENT
D'UN DESSIN INDUSTRIEL**

**APPLICATION FOR REGISTRATION
OF AN INDUSTRIAL DESIGN**

Le demandeur,
The applicant, _____,
(nom du demandeur - name of applicant)

dont l'adresse complète est
whose complete address is _____

demande l'enregistrement d'un dessin pour un(e)
hereby requests registration of a design for a _____
(désignation de l'objet - title identifying article)

dont il est le propriétaire.
of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage
lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the
time the design was adopted by the first proprietor.

Description du dessin :
Description of the design:

Canada

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À remplir seulement si le demandeur a un mandataire
To be completed only if an applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
**REPRÉSENTANT AUX FINS DE
SIGNIFICATION** au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Hull (Québec) K1A 0C9
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Dessin industriel Industrial Design

Certificat d'enregistrement

Certificate of Registration

N° d'enregistrement :
Registration No.:

Document :
Document:

Ayant trait :
Affecting:



Membre du personnel du bureau du commissaire aux brevets /
Officer of the Office of the Commissioner of Patents

Date

Canada

(CIPD 32)

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Abandonment – An application for an industrial design will be considered abandoned if the applicant fails to reply within the specified time to any report which sets out objections to registration.

Application – The formal request for an industrial design. The complete application has five main elements: description, title, drawings or photographs, declaration and fees.

Assignment – The permanent transfer of design rights from the owner to another party.

Canadian filing date – The date your completed application is officially received at the Industrial Design Office (not to be confused with the registration date at the end of the process).

Canadian Intellectual Property Office (CIPO) – The federal government agency responsible for industrial designs and other forms of intellectual property, including patents, trade-marks, copyrights and integrated circuit topographies.

Certificate of registration – Official confirmation that your design has been registered.

Convention priority – A protocol that gives you six months to file for design registration outside Canada after your Canadian filing date.

Convention priority applies in countries that have signed the *Paris Convention* (see definition below).

Copyright
Provide protection for literary, artistic, dramatic or musical works (including computer programs), and three other subject-matter known as: performance, sound recording and communication signal.

Declaration – Formal statement that you are the proprietor (see definition) of the design and that, to your knowledge, no one else was using the design when you created it.

Description – A description is a basic requirement of an application for an industrial design. It identifies the features of shape, configuration, pattern or ornament that comprise the design, and indicates whether the design resides in the entire article or a portion.

Design patent – The term used in the United States to describe a form of protection similar to that of industrial design protection in Canada.

Drawings – Drawings or photographs disclose the industrial design and are a basic requirement of a design application.

Examination – The process through which the Industrial Design Office determines

whether a design warrants registration. The main objective is to determine that the design is indeed design subject-matter, that it is original and that the documentation meets the requirements of the Act and Regulations.

Industrial design – The visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

Industrial Design Act – Legislation governing registration and ownership of industrial designs in Canada.

Industrial Design Office – The office within the Canadian Intellectual Property Office responsible for registration of industrial designs.

Infringement – Violation of industrial design rights through unauthorized use of a design.

Licensing – The granting from the owner of a design to another party, certain rights related to the design. This may include such things as the right to use, manufacture and sell the design.

Maintenance fee – Fee required in order to maintain the rights to an industrial design for a second five-year period.

Marking – Signalling that a design is registered by placing a capital “D” in a circle – along with the name, or abbreviation thereof, of the design’s proprietor on the object to which the design has been applied, or to its label or packaging.

Paris Convention for the Protection of Industrial Property – An international treaty on intellectual property signed by some 90 nations, including Canada.

Patent – Covers new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention.

Prior art – The body of registered industrial designs or other published designs including catalogues, manuals and other publications throughout the world relevant to the application for registration of a design.

Proprietor – The proprietor of an industrial design is the owner of the design. This can be the person who created it or who paid to have it created or who bought the design rights from the owner.

Publication – Publication of a design is the act of making it public or available for commercial sale or use anywhere in the world.

Registration – The granting of formal recognition of an industrial design by the Industrial Design Office. This provides protection against imitation and unauthorized use of the design effective from the date of registration.

Representative for service – A person in Canada appointed by the applicant or registered proprietor to receive documents on his/her behalf.

Search – The act of searching through registered and published designs in the Industrial Design Office records to verify whether a design is original.

Trade-mark – A word, symbol or design (or a combination of these), used to distinguish the wares or services of one person or organization from those of others in the marketplace.

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DESSIN INDUSTRIEL

PART A - INDUSTRIAL DESIGN
FILING CERTIFICATE

Nom et adresse du demandeur ou agent - Name and address of applicant or agent

N° de référence du client - Client's reference no.

Nom du demandeur - Name of applicant	Pays - Country
Article fabriqué - Article of manufacture	

☐ Le demandeur revendique une priorité conventionnelle relativement à une demande à l'étranger :
Applicant claims convention priority on the basis of the following foreign application:

Pays - Country	Date A - Y M J - D	N° de la demande- Application no.

À L'USAGE DU MINISTÈRE SEULEMENT - FOR DEPARTMENTAL USE ONLY				
N° de la demande - Application no.	Date de dépôt Filing date	A - Y M J - D	Priorité conventionnelle revendiquée Convention priority claimed	Approuvée - Approved
			<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Motif - Reason				

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Tear

PARTIE B - LISTE DE CONTRÔLE
Ci-joint les documents et les droits perçus

PART B - CHECKLIST
The following papers and fees are enclosed

<input type="checkbox"/> Formule de demande Application form	<input type="checkbox"/> Dessins / photographies Drawings / photographs	►	<input type="checkbox"/> Officiels Formal	<input type="checkbox"/> Non-officiels Informal			
<input type="checkbox"/> Droits pour l'examen Fees for examination	►	Montant Amount	\$	<input type="checkbox"/> Autres droits Other fees	►	Montant Amount	\$
			_____				_____

REMARQUES - REMARKS	
Personne-ressource - Contact person	
N° de téléphone - Telephone no.	Date A - Y M J - D

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How Your Industrial Design Application is Processed

Government
Publications

You can obtain further information
concerning your application for
registration by:

Telephone: (819) 997-1725

Fax: (819) 953-6977

If you have already obtained a
registration number from our Office
and you would like further
information concerning your file,
please indicate your registration or
file number when making any new
request for service relating to your
file.

Note: A large number of applicants
seeking Industrial Design protection
are represented by a registered
patent agent. When an agent has
been appointed, the Office will
address all correspondence to the
agent.

Enquiries concerning the various
phases of prosecution should,
therefore, be directed to the
appointed agent.

Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Formalities (processing)	If the application is complete and the prescribed fee paid, a filing date and application number are assigned and file and index cards are created. The application will then proceed to classification and examination.	A filing certificate will be sent showing the date of filing and the application number.	... within 4 weeks of receipt of application.	CAN\$160 Examination fee payable upon filing.
	If the application is incomplete (missing declaration, title, description, fees or drawings), the application is placed on hold and you will not receive a filing date until it is complete.	A report will be sent describing why the application is incomplete.	... within 4 weeks of receipt of application.	
Classification	If it is clear what the article is, your application is classified according to the <i>Canadian Industrial Design Classification Manual</i> .	No notification is sent to the client.		none
	If it is not clear, the application is placed on hold until more information can be obtained from you about the article.	A report will be sent requesting more information.	... within 2 weeks of preliminary classification.	none
	If the application does not constitute registrable subject-matter, classification and examination do not take place.	You will be advised by phone or by letter and given the opportunity to submit arguments or withdraw the application.	... within 1 week of classification.	none
Examination	A search of registered designs and published art is conducted, the design is assessed to determine originality, and the application is checked for conformity to the requirements of the <i>Industrial Design Act</i> and <i>Rules</i> . If all requirements are met, the application is allowable for registration. (see Allowance)	No notification is sent to the client.	... within 9 months of receipt of application.	none
	If the application is not acceptable, the examiner will explain the reason(s). You may respond by making amendments or by submitting arguments against the examiner's objections. Such submissions are reviewed by the examiner and if the application is still not acceptable, the examiner will contact you again to explain the reasons.	You will receive an examiner's report.	A first report will be issued within 9 months of receipt of application. Subsequent examiners' reports will be issued within 1 month of receipt of your amendment or comments.	No fee is required for amendments.

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Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Allowance	<p>If all requirements are met, the application is allowable for registration. (An international treaty requires that the Office not register before the expiration of a 6-month period from the filing date or the priority date where priority is claimed. Thus, in cases of infringement where the application has been allowed before the 6-month date, the file will not be registered until the 6-month period has elapsed.)</p> <p>A final pre-registration search will be done to ensure that there is not a similar pending design with a prior date of filing.</p>	<p>Notification is given only upon request, in which case, you would be notified by telephone.</p> <p>If such prior art exists, you will be notified by an examiner's report.</p>	<p>On request, a telephone call will be made within 1 day of request.</p> <p>... within 1 month of the allowance date.</p>	none
Final report	<p>If objections by the examiner are not overcome by your arguments, the examiner will advise you that the application remains unacceptable for registration and that you may request a review by the Patent Appeal Board.</p> <p>(If your appeal is rejected, you may take your case to the Federal Court within a limited time.)</p>	You will receive a final report.	... within 1 month of receipt of your last submission.	
Registration	The processing clerk assigns a registration number and the certificate of registration is prepared. The certificate and attachments are microfilmed before being sent to you.	The certificate of registration will be mailed.	... within 2 weeks from the registration date.	none
Abandonment	If you fail to respond to a report by the specified deadline, the file will be retrieved and your application will be considered abandoned.	A notification of abandonment will be issued.	... within 2 weeks of the file being identified for abandonment.	none
Reinstatement	<p>If you write to request reinstatement of an abandoned application and respond to any outstanding report, the file is retrieved and put back in process.</p> <p>The request for reinstatement must be received within 6 months of the date of abandonment.</p>	No notification is sent to the client.	Reinstatement will occur within 2 weeks of receipt of the request in the Office.	none
Assignment	Assignments may be processed during or after examination and registration. The chain of title and assignment document are verified and a transaction certificate is prepared.	The transaction certificate will be sent out with the assignment document.	... within 1 week of receipt of the assignment.	\$35
Request for delay of registration	If you wish to delay registration in order to allow filing in another country you should advise the Office in writing. A note will be placed on the file and the examination process continues. If the application is in an allowable state, it will be held from registration for a specified period of time.	Notification will only be sent upon request.	... within 1 week of receipt of the request.	none
Request for extension of time to respond to a report	Upon receipt of your written request, an extension of up to 4 months will normally be granted. The report will be stamped indicating an extension date.	You will receive a stamped copy of your letter confirming the extension date.	... within 1 week of receipt of the request.	none
Request for accelerated action	Upon receipt of your written request, which provides details regarding the alleged infringement, the application will proceed to examination immediately for action. (see Allowance regarding earliest possible registration)	You will be advised by telephone if the examination will be accelerated.	... within 1 week of receipt of the request.	none
Maintenance fees	<p>Your registration will be maintained upon receipt of the maintenance fee. This will continue the registration for the remaining 5 years of the 10-year period.</p> <p><i>(please make all cheques payable to the Receiver General for Canada)</i></p>	You will receive a maintenance certificate.	... within 1 week of receipt of the fee.	<p>CAN\$215 If the request is received within 5 years of registration date.</p> <p>CAN\$250 If the request is received in the 6 months following the 5-year period.</p>

A more extensive Guide to Industrial Designs is available free of charge from:

IC no. 11370 E
IC no. 11371 F

Publications Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

Telephone: (819) 953-5054
Fax: (819) 953-8998

Internet: <http://cipo.gc.ca>
E-mail: cipo.contact@ic.gc.ca



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

CAI
TST 70

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

4/10

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
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Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-1725
Facsimile: (819) 953-6977

**DEMANDE D'ENREGISTREMENT
D'UN DESSIN INDUSTRIEL**

**APPLICATION FOR REGISTRATION
OF AN INDUSTRIAL DESIGN**

Le demandeur,

The applicant, _____
(nom du demandeur - name of applicant)

dont l'adresse complète est
whose complete address is _____

demande l'enregistrement d'un dessin pour un(e)
hereby requests registration of a design for a _____

(désignation de l'objet - title identifying article)

dont il est le propriétaire.
of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage
lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the
time the design was adopted by the first proprietor.

Description du dessin :
Description of the design:

**Office de la propriété
intellectuelle
du Canada**Un organisme
d'Industrie Canada**Canadian
Intellectual Property
Office**An Agency of
Industry CanadaCAI
TST 70G75 À remplir seulement si le demandeur a un mandataire
To be completed only if an applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
REPRÉSENTANT AUX FINS DE
SIGNIFICATION au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

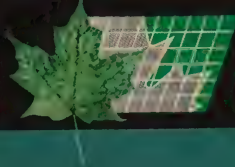
Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
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Design Branch
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Facsimile: (819) 953-6977

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CIPO
CANADIAN INTELLECTUAL PROPERTY OFFICE

Government
Publication

A GUIDE TO INDUSTRIAL DESIGNS



Canada



Industry
Canada

Industrie
Canada

Pour obtenir un exemplaire de la présente publication en français
(*Le guide des dessins industriels*), veuillez vous adresser à la :

Direction des communications
Centre des publications
Industrie Canada
Ottawa (Ontario)
K1A 0C9
(819) 953-1075

A GUIDE TO INDUSTRIAL DESIGNS



I N D U S T R Y C A N A D A

The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Industrial Designs Act*, the Industrial Designs rules, and in decisions of the courts interpreting them.

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A well-designed chair is not just a pleasure to sit on, but a pleasure to look at as well. This can be said for almost every manufactured product: its success in the marketplace will depend not only on its functionality, but on its aesthetic appeal as well. That is why manufacturers invest a great deal of money and know-how in industrial design and why an original design is considered valuable intellectual property.

If you are the creator of, or an investor in, an original industrial design, Canadian law offers you protection from unlawful imitation of your design. *The Industrial Design Act*, like other forms of intellectual property legislation, works to protect owners while promoting the orderly exchange of information. The way to obtain such protection is to register your design with the Canadian Industrial Design Office.

Your industrial design is worth a great deal in time and money, and it may mean the success of an entire enterprise. It pays to protect your intellectual property by knowing your rights and how to use them.

Purpose of this guide

In this guide we will look at what industrial designs are, what makes them “registerable,” the advantages of registration and how to go about it. Keep in mind that this booklet offers general information only and does not cover all the complex issues that may arise throughout the registration procedures. It should also be noted that this booklet is not an authoritative guide on Canadian law regarding industrial design.

For exact definitions and detailed regulations, consult the *Industrial Design Act*, the *Industrial Designs Rules* and legal texts on intellectual property available in many libraries. The Canadian Industrial Design Office can also provide further information.

The Canadian Industrial Design Office

The federal agency responsible for registering industrial designs is the Canadian Industrial Design Office. The Office is part of a larger agency called the Canadian Intellectual Property Office (CIPO), which is part of Industry Canada. In

addition to industrial designs, CIPO is responsible for other forms of intellectual property. These are:

■ **patents** – for inventions, that is, new kinds of technology (process, structure and function) and, in certain circumstances, patent protection also may be available for computer software;

■ **copyrights** – for literary, artistic, dramatic and musical works and computer software;

■ **trade-marks** – words, symbols, or combinations of these, used to distinguish the goods or services of one person or organization from those of another; and

■ **integrated circuit topographies** – the three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs found in semiconductor chips.

What is an industrial design?

An industrial design is the shape, pattern or ornamentation applied to a useful article that is mass-produced. It may be the shape of a table, the ornamentation on the handle of a spoon, and it may be made by hand, tool or machine.

The design must have features intended for visual appeal, but the Design Office will not judge the quality or merits of those features.

Other forms of intellectual property

People often confuse industrial designs with other forms of intellectual property.

A **copyright** is legal protection for an artistic endeavour. Often an industrial design is first created as a work of art, and as such, is originally protected by the *Copyright Act*. An artistic work is protected under the *Copyright Act* automatically, but a design is protected under the *Industrial Design Act* only if it is

registered. Therefore, it may be a good idea to register your design, even if you have copyright protection for the original art. If you are in doubt about the appropriate course, it may be wise to consult a lawyer or a registered patent agent.

Patents are for new inventions or processes that offer innovative and useful functions. Canadian law regards the functional aspects and design aspects of articles quite separately. Therefore, you cannot list a function as an element of your industrial design. You may, however, be able to obtain a patent for your article's functional aspects and an industrial design for its aesthetic ones. Suppose you develop a new kind of folding chair. The way the chair folds, its lightweight construction, its strength and its durability are all functional qualities. The industrial design features would include the shape and ornamentation of the chair, any patterns on it and its appearance (folded and unfolded).

Trade-marks are used to distinguish the goods or services of one person or organization from those of another. A design feature of a product or its packaging can be an aspect that distinguishes it from someone else's product. You can register such a feature as an industrial design and, in a separate process, as a trade-mark. Suppose, for example, you created a soft drink bottle with a unique shape. You could register the shape with the Industrial Design Office and later as a "distinguishing guise" (a type of trade-mark) with the Trade-marks Office. Keep in mind that for your bottle to be considered a trade-mark it must be put on the market and become associated with your product. Therefore, to ensure maximum protection, you might wish to seek industrial design registration first.

To be eligible for registration with the Industrial Design Office your design must be original and you must be producing the article in quantity or intending to do so.

When to file an application

There is no time limit for filing an application as long as the design has never been published. The term "published" in this context means that the design has been made public or offered for commercial use. It is best to file as quickly as possible if publication has occurred. You must file within 12 months of publication or you will lose your exclusive rights to the design.

In making a decision about whether your design can be registered, the Industrial Design Office may ask for further information. Such information may be needed if it appears that:

- the article is a component of a larger machine or part of another article which is purely functional;
- users will never see the article in the form disclosed by the application;
- the article is normally not visible when used; or
- the description portion of the application describes utilitarian features.

Why you should register

The advantage of registering your industrial design is that it gives you exclusive rights to your design. Registration enables you to prevent others from making, using, renting or selling your design in Canada for up to 10 years. Keep in mind that, **unless you register your design**, you can make no legal claim of ownership and have no legal protection from imitation. This is different from trade-mark and copyright protection, which allow you to claim ownership even without registration.

Who can apply?

Only the proprietor of a design may apply for and obtain registration for an industrial design. Usually, you are considered the proprietor if you have created the design. However, if you've been hired under contract to develop a design by someone else, then that person is the proprietor and is the only one entitled to apply for registration.

If you work together with other people to create a design, you should file for registration as joint proprietors (unless you are all working under commission).

If you have acquired ownership of a design then you may apply.

If you are an employee of a company and develop a design as part of your employment, then the employer may be the proprietor. In that case only the employer may apply.

Industrial design registration is valid only if applied for and obtained in the name of the proprietor. You will save yourself time and expense by resolving the issue of ownership **before** applying for registration.

Before you file

You may come to the Industrial Design Office in Hull, Quebec, to conduct a search of Office records prior to application to determine whether your design is truly new and original. The Office will explain search procedures to you but will not conduct the search for you. This may give you the opportunity to see other designs. You should also keep your design confidential.

What you cannot register

You cannot register the following under the *Industrial Design Act*:

- designs for articles that serve no useful purpose;
- designs that are utilitarian only and which are not intended to provide visual appeal;
- designs that have no fixed appearance (for example, the changing shapes of a beanbag chair);
- designs for components that are not clearly visible (for example, features that are hidden from view under a casing);
- a method of construction;
- an idea;
- materials used in the construction of an article;
- the useful function of the article (see discussion of patents in section above); or
- the colour as such (other than a pattern that may be created by an arrangement of contrasting colours).

How long the process takes

In order to meet the obligation of an international treaty signed by Canada, the Office does not register any design until six months after the date of filing. Therefore, normally, it takes between 6 and 12 months to have your application examined and registered by the Office.

The Office examines applications on a first-come, first-served basis. If your application is properly prepared, registration will occur as quickly as possible. But if the application is not complete or incorrectly completed, the process will take longer, in which case the speed of registration will depend very much on how quickly you respond to queries, requests for changes, and other information from the Office.

You may be granted faster service if you believe that your design has already been, or is about to be, imitated by someone else. In such a case, the Office will proceed with examination as soon as you notify the Office.

How long registration lasts

As of January 1, 1994, registration is for a ten-year term. Before the expiry of five years from the date of the registration of the design, a maintenance fee must be paid. Once the term has expired, anyone is free to make, use, rent sell the design in Canada.

For designs registered prior to January 1, 1994, registration is for a five-year term renewable for a further five years. Once these terms have expired, anyone is free to make, use, rent or sell the design in Canada.

Fees

You must pay a fee to have your application examined by the Industrial Design Office. There are additional fees for renewal and late renewal of a design registered prior to January 1, 1994, and for maintenance and late payment of the maintenance fee of designs registered after January 1, 1994. Fees are subject to change without notice. (For details about fees, see page 18.)

Getting help with your application

You may file your own application for industrial design registration, and the Industrial Design Office will give you the basic information you need to do so. The Office will not, however, prepare your application or conduct a registrability search of existing designs for you.

The Office will not express opinion about the aesthetic or commercial merits of your design or tell you in advance of filing whether it qualifies for registration.

However, drafting an application requires much careful attention to detail and knowledge of the regulations. For this reason, you may hire a registered patent agent to prepare and “prosecute” – that is, to follow through on – your application. Most industrial design applications are done in this way. Registered patent agents are experienced in the field.

You may obtain a list of registered patent agents by contacting the Canadian Intellectual Property Office. The Office will not recommend any particular agent and does not regulate their fees.

Preparing your application

A complete application for an industrial design has four basic elements which are required by the *Industrial Design Act*:

- a written description of the original features of the design;
- drawings or photographs of the design;
- a declaration (see following section, “The application form”); and
- the required fee(s).

In addition, foreign applicants must provide the name and address of someone in Canada who will act as their representative for service.

The application must follow the format of an official form that can be obtained free of charge from the Industrial Design Office or from your regional Industry Canada office. The Office will also provide you with a filing certificate and a checklist. Samples of the various forms are presented in Appendix B.

The application form

You will find an example of a blank application form in Appendix B of this guide.

Remember the following important points when you complete your application:

- Only the current proprietor of a design (see p.6) can file an application.
- You must sign your application. It includes a declaration that you are the proprietor of the design and that, to your knowledge, no one else used the design before you or the first proprietor.
- Your application must include a description and drawings or photographs of your design as it is, or will be, incorporated in an article of manufacture.
- If you don't have enough room to complete your description on the first page of the application form, please continue on a separate sheet of paper. Do not finish the description on the back of the form.

■ You must use the generic or common name of the article that the design is applied to in the title that appears in your application. (For example: “lighter,” “chair,” “spoon,” “T-shirt.”)

■ You must provide your full mailing address.

Send the completed application to:

Industrial Design Office
Canadian Intellectual Property Office
Industry Canada
Ottawa, Ontario
K1A 0C9

Any correspondence sent to the Industrial Design office through the priority courier service of Canada Post Corporation will be considered received by the Office on the date stamped on the envelope by the priority courier service.

The description

The description you set out in your application must be of the **design**, not the **article** to which it has been applied. For example, do not describe a chair (four legs, a seat and a back) but rather describe the design features that make your chair visually unique.

You do not need to describe every particular of the design, but you should indicate what it is and what you believe are its original visual features.

Keep in mind that you or your agent are responsible for giving an accurate, adequate description of your design. The Industrial Design Office can only ensure that your wording meets the basic requirements of the Act. It's up to you to ensure that it covers all the distinctive features of your design.

Since the courts may use your description to help determine the limits of protection for your design, you should word your description with care and precision. If your description is too broad, you may over-extend the scope of the design, and it may be impossible to enforce. It is important to describe the important features of your design to show how it is distinctive.

Keep the following in mind when you word your description:

- You should clearly define your concept of the shape, configuration, pattern or ornamentation as applied to the article of manufacture.
- If you know that similar designs already exist, you should include enough detail in your description to differentiate your design from the others.
- You should describe which design features you consider the most important.
- You should focus your description strictly on the visual aspects of the design. Do not describe the design in terms of the article's function. For example, a distinctive tread on the

sole of a boot may have functional properties (to prevent slipping) as well as visual appeal (it's in the shape of a snowflake). Registrability is based on the aesthetic (visual) aspects only.

Drawings and photographs

Your application must include drawings or photographs of the design *as applied to the article of manufacture*. You must draw or photograph your design as it appears in the product. Detailed views may be shown separately.

The function of drawings or photographs is to show the design clearly. Drawings or photographs should be consistent with, and complementary to, the description.

A) Size and Paper Quality and Mailing Instructions – Whether you submit drawings or photographs, they should be on good quality paper, sized either 22 X 28 cm (8 1/2 x 11 inches) or 20 X 33 cm (8 x 13 inches). They must be able to be clearly reproduced by photocopying equipment.

You must send all your drawings flat, not rolled, and they should be protected by a heavy sheet of cardboard.

B) Margin – There must be a clear margin of approximately 2.5 cm (or 1 inch) on the left-hand side of the paper.

C) Character of Lines/Quality of Photograph – In the case of drawings, make every line, no matter how fine, with black ink and ensure that they are permanent. All lines must be clear and full. Avoid fine or crowded lines.

You may use dotted or stippled lines to distinguish surrounding structure, but the article itself must be shown in solid lines. You have the option of highlighting the design features with heavy black lines or by other means as long as the result is clear and can be reproduced by photocopying equipment. Do not include stippled or broken lines which depict hidden structural or functional details that are not part of the design.

Photographs must show every feature of the design clearly. The angle from which the photograph is taken must not distort the true image of the article, and it must stand alone against a neutral (blank) background.

D) **Scale** – All drawings must be sufficiently large so that what is described can be clearly seen. They must also be consistent in terms of scale (except for enlargement views) and must be easily readable.

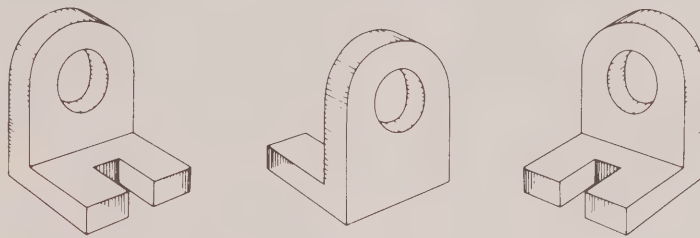
E) **Content** – Your drawing or photograph should show every feature of the design as applied to the article into which it has been incorporated. This may require more than one view. The Design Office will not amend your drawings.

F) **Number of Views** – Your drawings or photographs should contain as many views as are necessary to present your design clearly.

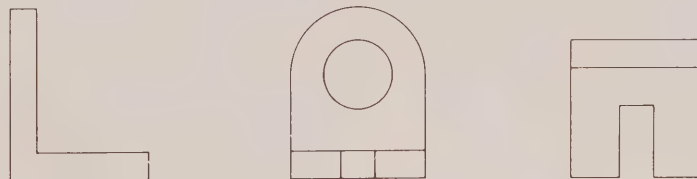
G) **Arrangement of Views** – All the views on one sheet should stand in the same direction and be readable in an upright position. You must not superimpose one figure on another or place it within the outline of another.

If views that are longer than the width of the paper are necessary for clear illustration of the design, you may turn the sheet on its side. The previously indicated 2.5 cm margin would then be on top.

H) **Types of Views** – We recommend perspective types for best presentation. Here are some examples:



Other means of illustration are also acceptable, for example:



I) **Shading** – You may use shading in drawings if you wish. Standard practice is the use of heavy lines on the shaded side of the object.

J) **Miscellaneous Features** – Occasionally, you will need to show the following features: open and closed positions, cross-sectional views (hatching), fragmentary views, flexible articles, transparent articles, and indefinite length and repeat patterns.

Your drawings or photographs may show views of the article in both open and closed positions or in extended and retracted positions **only** if such views are necessary to reveal design features referred to in the description and if the article is normally seen and used in these different positions.

You may present a cross-sectional view if this is necessary to show the exterior profile of the article. Indicate the exposed cut surface by oblique parallel sectional lines. Do not use symbolic section lines to suggest a specific type of material.

If your article is made up of a number of components, the drawings or photographs should show the assembled article. Do not present exploded views.

Further or more specific information on how to present these features is available by contacting the Industrial Design Office.

K) **Identification** – The title, descriptive matter, dimensions or names should not be included on the drawing, but you may put your signature (as proprietor) on the lower right-hand corner of each sheet.

L) **Samples** – The Office may ask you to provide a sample of the design (e.g. a swatch of textile fabric) to supplement the drawing or photograph.

Keep in mind that the purpose of the above rules is to allow the examiners to see your design clearly as consumers would see it.

Multiple representations of the same design

Your industrial design application must be limited to a single design, but you may include several representations or variations of that design. These representations must meet the following conditions:

- The original design features in each representation should not differ significantly.
- The article or articles to which the design is applied must be of a similar nature.

You may add multiple representations of a single design to your application any time **before** registration. You do not have to pay additional fees to do this. But if you change your design substantially, you will have to submit a new application. Once your design is registered, no further changes can be made.

If your series of drawings does not meet the above conditions, you will have to choose one and delete the rest from the application.

The process of obtaining a design registration is made up of three distinct phases:

- initial processing (when you file the application),
- examination (three to six months after filing)
- registration, that is, the production of the registration certificate (at least six months after filing unless there is a convention priority claim)

Initial processing

Your application will undergo a preliminary review by clerical staff to ensure that basic administrative requirements have been met. At this time a filing certificate will be issued; this is merely an acknowledgement that the application has been received and processed. It also gives you the number assigned to your application so that you can refer to that number in later correspondence. If the application is incomplete you will also receive a notice advising you of what is required to complete it.

Every notice or report issued by the Office will give a due date for reply. If you do not reply by that due date your application will be considered to be abandoned.

Examination

The first step in this phase of the process is the classification of your application according to the particular type of article to which it relates. This is followed by a formal assessment by an examiner who will study your description and drawings or photographs. These will then be compared with previously registered and published designs to ensure that your design is original and registrable. Your design cannot be the same or similar to a design already applied to a similar article of manufacture. The wording of the description will also be considered to see that it accurately and adequately describes the design features shown in the drawings. Following this assessment the examiner will either allow (approve) the application for registration or issue a report. The report will outline the examiner's findings and tell you what information or amendments are required.

Amendment

If the examiner does express some concerns about your application, you will probably be able to satisfy them by providing the information or making the suggested amendments. Don't feel that you must abandon your application simply because an objection has been raised. If you do not understand the report completely, call the examiner for clarification. The phone number will be given on the report. You have four months to reply to the report, otherwise your application will become abandoned. If this occurs, you can reinstate your application by replying to the examiner's report.

A fee for reinstatement has been proposed and will most likely be implemented about July 1994.

Appeals

If you cannot satisfy the concerns expressed in the examiner's report, your application will be rejected in a final report issued by the Director of the Office. You may appeal this rejection to the Patent Appeal Board which will make recommendations to the Commissioner of Patents who will either reverse the Director's decision or reaffirm it in a final rejection. If you are still not satisfied, you may appeal the final rejection to the Federal Court of Canada whose decisions are appealable, in turn, to the Supreme Court of Canada.

Conflicts

Should different people apply to register essentially the same design, the Industrial Design Office will examine the applications on a first-come, first-served basis. The application with the earlier filing date (either the Canadian filing date, or the Convention filing date, if filed earlier in another country) will be registered.

Requests for delayed registration

It is possible that you may want to delay registration. For example, you may wish to allow time to market or file your design outside Canada. In this case, you should inform the Office in writing. You may exercise the option to delay registration at the time of filing your application or at any time before it is registered.

Registration

Once approved by the examiner your design will be registered as soon as possible, provided that the six-month waiting period required by international convention has elapsed and you have not requested delayed examination. You will receive a certificate of registration which includes the description and a drawing of the registered design. This certificate is evidence of ownership and the originality of your design and gives you the exclusive right to make, use and sell the design, *in Canada*, in whole or in part.

Duration

Designs registered prior to January 1, 1994 are valid for five years and may be renewed for a second five-year period by sending the Office a letter of request along with the renewal fee. The Office should receive your request before the first five-year term expires, but requests can still be made up to three months after the expiry date with payment of an additional fee. Your request for renewal should identify the registration by number, title and name of proprietor.

Designs registered after January 1, 1994 are valid for ten years subject to payment of a maintenance fee. That fee shall be paid by the registered proprietor or by his/her agent. Maintenance may be requested at any time during the first five-year period upon payment of the basic maintenance fee. However, a six-month grace period exists during which maintenance may still be requested but this requires payment of an additional fee. Your request should identify the registration by number, title and name of proprietor. For details about fees, see page 18.

Marking a product

You do not have to mark your product in order to indicate that it is registered as a design, but marking **does** give you extra protection. The proper mark is a capital “D” inside a circle and the name, or abbreviation thereof, of the design’s proprietor on the article, its label or packaging.

If your product is marked in this way, a court could award a remedy, such as financial compensation, in the event that someone is charged and found to be “infringing” (i.e. violating) your design. If there is no such mark, the court cannot award a remedy other than forbidding the other party from using your design (an “injunction”).

Enforcing your rights

As proprietor, you may take legal action against anyone who infringes your design in Canada. It is your responsibility to take such action and you must do so within three years of the alleged infringement. The Industrial Design Office will not launch legal proceedings on your behalf or police your rights in any way.

Marketing rights

As the proprietor of a registered industrial design, you have the exclusive right in Canada to make, use, rent or sell a product incorporating that design. You may also sell all or some of your rights to others (this is referred to as an assignment) or, you can simply authorize others to use the design subject to stated conditions (this is referred to as a licence).

Assignments

An “assignment” occurs when you sell all or part of your rights in the design **permanently** to another party. This party, or “assignee,” assumes your ownership rights to make, use, rent or sell products incorporating the registered design and to authorize others to do so. Usually, the arrangement involves an exchange of money. The assignment must be in writing but there are no prescribed forms for this. A sample form which meets the requirements of the Office is provided in Appendix B but that sample is a very simple one which may not adequately cover the interests of both parties should there be a dispute. For that reason it is advisable that assignments be prepared with the assistance of a lawyer.

The new owner should ensure that the assignment is recorded with the Industrial Design Office. This is done by sending in either the original or a certified copy of the assignment document along with the recordal fee (for details about fees, see page 18). Recordal of the assignment allows the new owner to sue for damages if anyone infringes the design.

Assignments may be recorded against pending or registered designs.

Licences

In many cases the greatest financial benefit comes from licensing the design. When you license your design, you allow someone else to use it in accordance with the particular terms and conditions set out in the licence which are negotiated between the involved parties. In this case you retain ownership and, you can, in some instances, license more than one party. You may, for example, license one party for western Canada, another for Ontario and

Quebec and still another for the Maritimes. Similarly, you could have an exclusive licence with one party for the first five years and another with a different party for the period of the renewal. As with assignments, licences should be registered. Licences tend to be more involved than assignments and for that reason it is even more important to consult a lawyer if you are considering a licensing agreement.

Note: If you wish to seek out Canadian manufacturers who might be interested in buying, licensing or leasing your design rights, two publications would be useful: the *Canadian Trade Index*, issued by the Canadian Manufacturers' Association, Toronto; and *Frazer's Canadian Trade Directory*. Both are available in public libraries.

Registration outside Canada

Registering your design with the Canadian Industrial Design Office gives you exclusive rights in Canada only. To enjoy similar rights abroad, you must apply for them in each country separately. Most industrialized

countries have equivalent industrial design protection. A list of foreign offices is available from the Office.

The **United Kingdom** has industrial design laws that are very similar to those of Canada, and the same term, "industrial design," is used.

The **United States** uses the term "design patent" to describe what roughly corresponds to the Canadian registered industrial design. Be careful not to confuse U.S. design patents with patents for inventions.

Procedures for obtaining international design rights are partially governed by an international treaty called the *Paris Convention for the Protection of Industrial Property*. The *Paris Convention*, which has some 90 member countries, including Canada, allows applicants to invoke what is called "Convention priority." This means that someone who has

filed for design registration in one Convention country has six months in which to file an application for the design in another country and be accorded the same rights as if he or she had filed in the second country on the original filing date.

Suppose, for example, you apply to register a design in Canada on January 5, 1994. You then have until July 5, 1994 to file for design rights in any other Convention country and claim the original Canadian filing date for that country.

It is important to note that in some countries your application could be rejected if you or someone else has already registered the design previously. To assist owners of designs in Canada in avoiding this unusual situation, the Canadian Industrial Design Office gives applicants the option of delaying registration so that their application in another country can proceed at the same time as their application in Canada.

The Industrial Design Act and *Industrial Designs Rules* will give you the details of regulations that govern design rights as they are spelled out in law. To obtain copies, contact:

The Canadian Government
Publishing Centre
Ottawa, Ontario
K1A 0S9

or any bookstore that sells federal government publications.

You can also obtain booklets similar to this one on other kinds of intellectual property (e.g. patents, copyright and trade-marks) from the Canadian Intellectual Property Office. It may be useful to consult these booklets to ensure that your work can be protected under *The Industrial Design Act* rather than copyright, trade-mark or patent laws.

For more information contact your regional Industry Canada office (consult the blue pages of your telephone directory for phone numbers), or write to:

Industrial Design Office
Canadian Intellectual Property
Office (CIPO)
Industry Canada
50 Victoria Street
Place du Portage, Phase I
Hull, Quebec
K1A 0C9

Should you wish to contact the Industrial Design Office by telephone, call (819) 997-1936.

Service

Fee Schedule - Industrial Design

1. Examining an application to register an industrial design and issuing a certificate of registration _____ \$ 160.00

2. Maintaining a design registered after **January 1, 1994:**
 - (a) if the request is received within five (5) years of the registration date _____ \$ 215.00
 - (b) if the request is received in the six (6) months following the five (5) year period mentioned in (a) _____ \$ 250.00

3. Examining and registering an application to register an assignment, a licence or other document affecting an industrial design and issuing a certificate of registration
 - (a) for the first industrial design referred to in the assignment, licence or other document _____ \$ 35.00
 - (b) for each additional industrial design referred to in the assignment, licence or other document _____ \$ 15.00

4. Providing copies of or extracts from the Register, or copies of certificates, drawings, drawn copies of industrial designs or other documents
 - (a) for each sheet, when a photocopy _____ \$ 0.50
 - (b) for each sheet, when typed _____ \$ 5.00

5. Certification of copies of documents

certification document costs \$15.00 plus charge for photocopies of application at \$0.50 a page

e.g.: certification _____ \$ 15.00

5 pages of application _____ \$ 2.50

TOTAL \$ 17.50

APPENDIX A - SOME COMMON QUESTIONS ABOUT INDUSTRIAL DESIGNS

Q1. What is an industrial design?

A. An industrial design is any original shape, pattern or ornamentation applied to a useful article of manufacture. Examples include the shape of a table, the ornamentation applied to the handle of a spoon. The article can be made by hand, tool or machine.

Q2. Must I register my industrial design in order to be protected?

A. Yes, there is no protection without registration.

Q3. What cannot be protected by an industrial design?

A. The following cannot be protected:

- a manufacturing process;
- functional features of an article;
- a principle of construction, or how an article is built;
- the materials used in the construction of an article;
- the useful purpose the design is intended to serve or does serve;
- colour per se;
- ideas; or
- for articles that serve no useful purpose.

Q4. Can I register my design as an artistic work under the Copyright Act?

A. If your design was originally created as a work of art, it would have been protected automatically under the **Copyright Act**. But once you use it, or intend to use it, as a model or pattern to produce more than 50 single useful articles or sets of articles, it becomes an industrial design, which can only be protected under the **Industrial Design Act**. Since the legal distinction is a fine one, it is advisable to seek legal advice on this matter.

Q5. If I register my design in Canada, am I protected in other countries?

A. No. You can obtain protection in other countries only by filing in each country separately.

Q6. Is there a time limit for filing an application for registration?

A. No, unless there has been "publication" (i.e., the design has been made public or offered for commercial use). In that case, you must file an application within 12 months of the publication date.

Q7. What papers do I need in order to apply for industrial design registration?

A. You must send in drawings or photographs of your design as well as a written description of the design's original features. You also must sign a declaration saying that you are the owner of the design and that, to your knowledge, no one else was using the design when you adopted it. Your application must be in accordance with the form entitled "Application for Registration of a Design," which is included in Appendix B of this booklet.

Q8. What type of description do I need to include?

A. The description does not have to detail every aspect of the design, but it must state clearly what the design is and what its original features are. You should describe the visual aspects of the design only (i.e. shape, pattern and ornamentation). Do not refer to how the article functions or performs. You may use geometric terms to describe your design.

Q9. What type of drawings or photographs are necessary?

A. Whether you submit drawings or photographs, they should be on good quality paper, either 22 x 28 cm (8 1/2 x 11 inches) or 20 x 33 cm (8 x 13 inches). They should be easy to reproduce clearly by photocopying equipment.

Q10. If I have a registered design, do I have to put any marking on the articles to indicate this?

A. Marking is not required. However, it is helpful in the event of a court proceeding. If there is no mark, the court cannot award a remedy other than an injunction, which will prevent further infringement on your design. The proper mark is a capital "D" in a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.

Q11. If I see a good design outside Canada and it does not appear to be on the market in Canada, can I register that design under my name here?

A. Not unless you have acquired ownership of the design.

Q12. How will the Industrial Design Office know if I did not originate the design?

A. The examiner searches through records of registered designs to determine whether anyone else already owns the design, or one so similar that yours would be considered an imitation. If so, your application will be refused. If the search does not disclose a similar design, your declaration of originality will be accepted and the design registered. It should also be noted that the courts have the power to overturn an invalid declaration at a later date.

Q13. Can anyone make a search through Industrial Design Office records to see what has been protected previously?

A. Yes, anyone can conduct a search free of charge. All materials are located in the Industrial Design Office, in Hull, Quebec. Design Office staff will give you the basic information you need to do the search. You may also obtain copies of drawings and other documents at a nominal fee (see the previous section entitled Fees).

Q14. May non-Canadians register their designs in Canada?

A. Yes, provided that Canadian requirements are met. Procedures of other countries have no effect in Canada.

Q15. If I sell my rights to a design to someone else, do I need to inform the Industrial Design Office?

A. *It is advisable to register the sale of rights, or "assignment," as it is known, with the Industrial Design Office. Many legal text writers have expressed the opinion that registration of an assignment would be necessary before the new owner could sue anyone for infringing the design.*


Q16. Would the Industrial Design Office stop someone else from infringing my design?

A. *No. This responsibility rests with the owner of the design. You must start any legal action within three years of the alleged offence.*

Q17. Can I get help in filing an application for industrial design protection?

A. *Yes. The Industrial Design Office will give you information on procedures for filing an application. Also, there are registered patent agents you can consult who have experience in this area. Look for them in the yellow pages of the telephone book under "Registered Patent Agents" or write to the Industrial Design Office (see page 17)*

APPENDIX B - INDUSTRIAL DESIGN FORMS



OPIC **CIPO**
OFFICE DE LA PROPRIÉTÉ INTELLECTUELLE DU CANADA / CANADIAN INTELLECTUAL PROPERTY OFFICE

PARTIE A - CERTIFICAT DE DÉPÔT

PART A - FILING CERTIFICATE

➔ Nom et adresse du requérant ou de l'agent
Name and address of applicant or agent

☐ Le requérant invoque la priorité relative à une demande produite à l'étranger.
Applicant claims convention priority on the basis of the following foreign application

A L'USAGE DU MINISTÈRE SEULEMENT - FOR DEPARTMENTAL USE ONLY

N° de la demande / Application No.	Date de dépôt / Filing date	A.Y.	M.	J.D.	Priorité de la convention demandée / Convention priority claimed	Approuvé / Approved
					<input type="checkbox"/> Oui / Yes <input type="checkbox"/> Non / No	<input type="checkbox"/> Oui / Yes <input type="checkbox"/> Non / No

Ancher / Tear

PARTIE B - LISTE DE CONTRÔLE

PART B - CHECKLIST

Ci-joint les documents et les droits perçus - The following papers and fees are enclosed

☐ Formulaire de demande / Application Form
☐ Droits pour l'examen / Fees for examination

☐ Dessins / photographies / Drawings / Photographs
☐ Montant / Amount \$

☐ Officiels / Formels / Officials / Formal
☐ Autres droits / Other fees Montant / Amount \$

A compléter seulement si le requérant n'a pas une adresse Canadienne - To be completed only if the applicant has no Canadian address

Le représentant aux fins de signification est - The representative for service is

☐ même que le mandataire / same as agent

Nom / Name


Adresse / Address

REMARQUES - REMARKS

Cet espace est réservé pour la validation du ministère / This space is reserved for departmental validation

Direction du droit d'auteur et des dessins industriels
50, rue Victoria
Place du Portage I
Hull, Québec
K1A 0C9

Copyright and Industrial Design Branch
50 Victoria St.
Place du Portage I
Hull, Québec
K1A 0C9




Industrie Canada

Industry Canada

7530-21-936-1646 (11-93) 43

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CLIENT: DETACH AND RETAIN PART B OF WHITE COPY FOR YOUR RECORDS





Consumer and
Corporate Affairs Canada

Consommation et
Affaires commerciales Canada

CIPQ
Canadian Intellectual
Property Office

OPIC
Office de la propriété
intellectuelle du Canada

Industrial Design

Dessin industriel

**APPLICATION FOR REGISTRATION
OF A DESIGN
DEMANDE D'ENREGISTREMENT
D'UN DESSIN**

The applicant,
Le demandeur, _____
(name of applicant-nom du demandeur)

whose complete address is
dont l'adresse complète est _____

hereby requests registration of a design for a
demande l'enregistrement d'un dessin pour un(e) _____
(title identifying article-désignation de l'objet)

of which the applicant is the proprietor.
dont il est le propriétaire.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the time
À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage

the design was adopted by the first proprietor.
lorsque celui-ci en a fait le choix.

Description of the design:
Description du dessin:

Drawing(s) / photograph(s) of the design is (are) included.
Esquisse(s) / photographie(s) du dessin est (sont) ci-incluse(s).

Signed at _____ on _____
Signé à _____ le _____
(place -lieu) (date)

(Signature of-Signature)

☐ Applicant-Demandeur

☐ Agent for the Applicant-Mandataire du demandeur

Copyright and Industrial Design Branch
50 Victoria Street
Place du Portage, Tower I
Hull, Québec
K1A 0C9

Bureau du droit d'auteur et des dessins industriels
Place du Portage, Tour I
50, rue Victoria
Hull (Québec)
K1A 0C9

7530-21-936-2241 (06-93) 43

OPIC
OFFICE DE LA PROPRIÉTÉ
INTELLECTUELLE DU CANADA



CIPO
CANADIAN INTELLECTUAL
PROPERTY OFFICE

N° d'enregistrement
Registration No.

Document
Document

Ayant trait
Affecting

Inscrit au Bureau des dessins industriels à Hull, Canada ce
Recorded at the Industrial Design Office at Hull, Canada on

Commissaire des brevets - Commissioner of Patents



Industrie Canada Industry Canada

Canada
7530-21-836-0357 (01-94) 43

Application – The formal request for an industrial design. The complete application has four main elements: description, drawings or photographs, declaration and fees.

Assignment – The permanent transfer of design rights from the owner to another party.

Canadian filing date – The date your completed application is officially received at the Industrial Design Office (not to be confused with the registration date at the end of the process).

Canadian Intellectual Property Office (CIPO) – The federal government agency responsible for industrial designs and other forms of intellectual property, including patents, trade-marks, copyrights and integrated circuit topographies.

Certificate of registration – Official confirmation that your design has been registered.

Convention filing date – The date that is recognized as your global filing date if you file for design registration in more than one country (provided these countries are signatories to the *Paris Convention*).

Convention priority – A protocol that gives you six months to file for design registration outside Canada after your original filing date. Convention priority applies in countries that have signed the *Paris Convention* (see definition below).

Copyright – Legal protection for literary, artistic, dramatic or musical works, and computer software.

Declaration – Formal statement that you are the proprietor (see definition) of the design and that, to your knowledge, no one else was using the design when you created it.

Description – A concise description of the original features of an industrial design. The description is a basic requirement of a registration application.

Design patent – The term used in the United States to describe a form of protection similar to that of industrial design protection in Canada.

Drawings – Drawings or photographs disclose the industrial design and are a basic requirement of a design registration application.

Examination – The procedures the Industrial Design Office undertakes to ensure that a design may be registered. The main objective is to determine that the design is indeed a design (not a function) and that it is original.

Industrial design – An original shape, pattern or ornamentation applied to a useful article of manufacture. Examples include the shape of a table or the decoration on the handle of a spoon.

Industrial Design Act – Legislation governing registration and ownership of industrial designs in Canada.

Industrial Design Office – The federal agency responsible for registration of industrial designs.

Licensing – Transferring design rights from the owner to another party on a temporary basis.

Maintenance fee – Fee required in order to maintain the rights to an industrial design for a second five-year period for designs registered after January 1, 1994.

Marking – Signalling that a design is registered by placing a capital “D” in a circle – along with the name, or abbreviation thereof, of the design’s proprietor (see definition below) – on the object to which the design has been applied, or to its label or packaging.

Paris Convention for the Protection of Industrial Property – An international treaty on intellectual property signed by some 90 nations, including Canada.

Patent – A government grant giving the right to exclude others from making, using or selling an invention.

Proprietor – The proprietor of an industrial design is the owner of the design. This can be the person who created it or who paid to have it created or who bought the design rights from the original owner.

Publication – Publication of a design is the act of making it public or available for commercial use.

Registration – The granting of formal recognition of an industrial design by the Industrial Design Office.

Renewal fee – Fee required in order to renew the rights to an industrial design for a second five-year period for designs registered prior to January 1, 1994.

Representative for service – A person in Canada appointed by the applicant or registered proprietor to receive documents on his/her behalf.

Search – The act of searching through registered and published designs in the Industrial Design Office records to verify whether a design is original.

Trade-mark – A word, symbol or design, or combination thereof, used to distinguish the goods or services of one party from those of another.

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IST70
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Canadian
Intellectual Property
Office

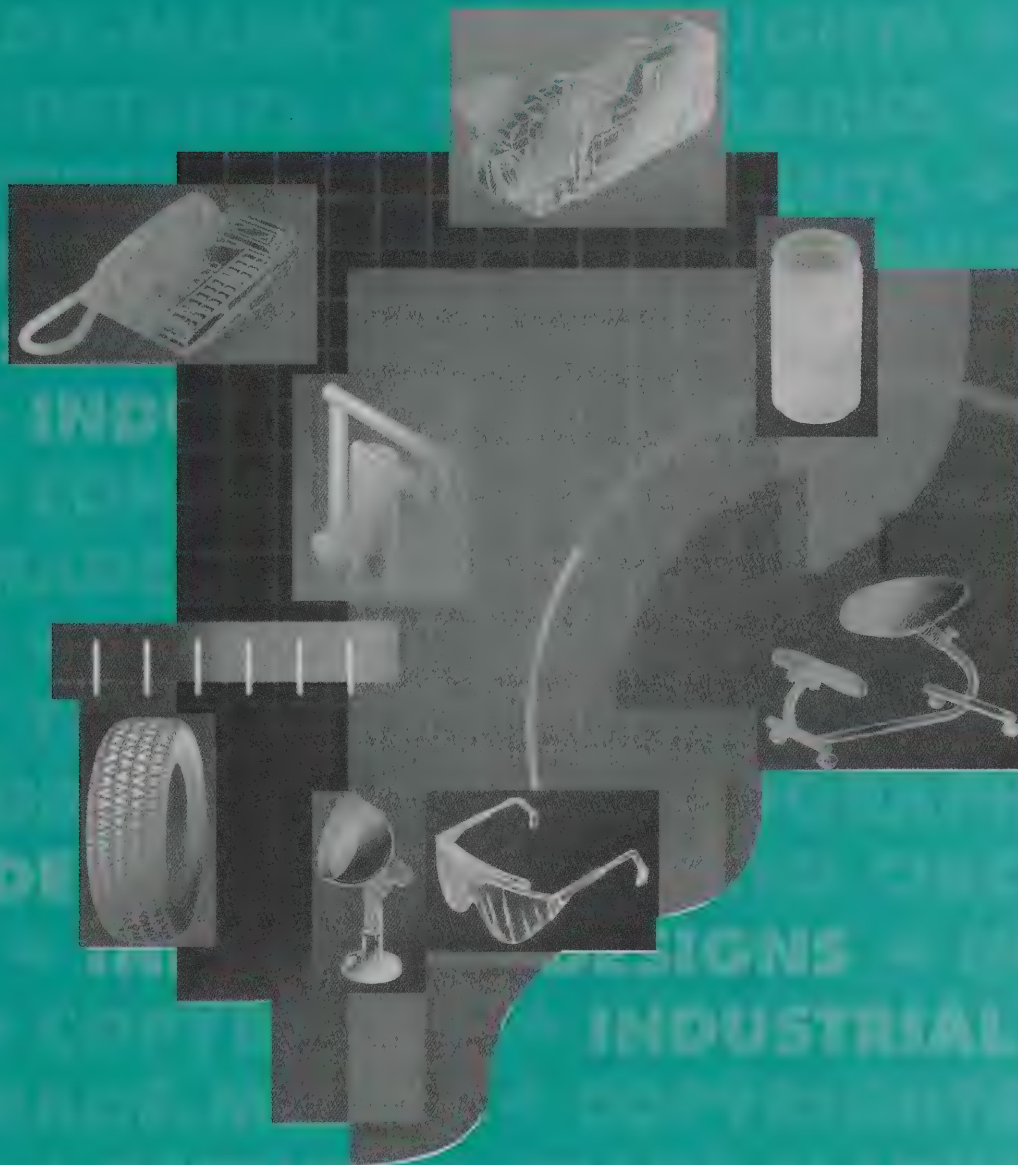
An Agency of
Industry Canada

Office de la propriété
intellectuelle
du Canada

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d'Industrie Canada

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A GUIDE TO INDUSTRIAL DESIGNS



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February 2006

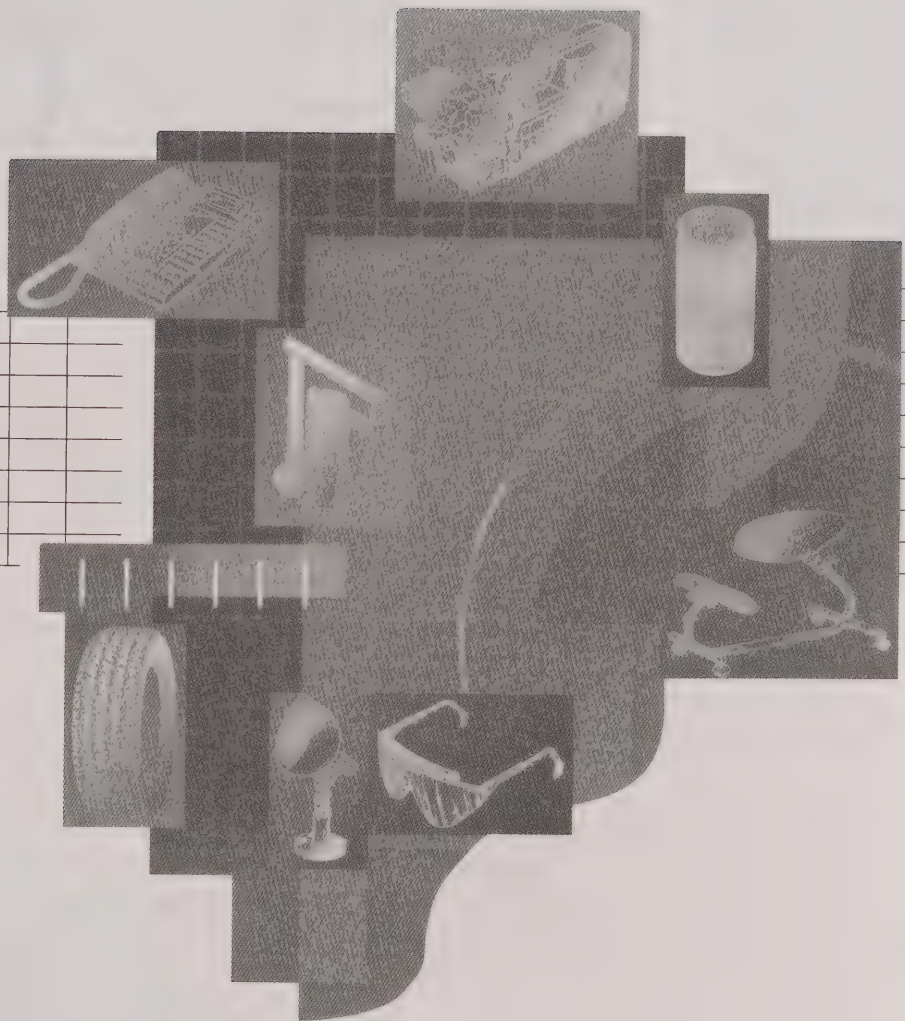
Canada

CIPO



OPIC

A GUIDE TO INDUSTRIAL DESIGNS



This publication is available upon request in multiple formats. Contact the Client Service Centre at the numbers listed below.

For further information or to obtain additional copies of this publication, please contact:

Client Service Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
Room C-229, 2nd floor
50 Victoria Street
Gatineau QC K1A 0C9

Tel.: (819) 997-1936
Fax: (819) 953-7620
Email: cipo.contact@ic.gc.ca



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The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be a legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Industrial Design Act*, the *Industrial Design Regulations*, and in decisions of the courts interpreting them.



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GLOSSARY 18

A well-designed chair is not just a pleasure to sit on, but a pleasure to look at as well. This can be said for almost every manufactured product — its success in the marketplace will depend not only on its functionality, but on its visual appeal as well. That is why manufacturers invest a great deal of money and know-how in industrial design and why an original design is considered valuable intellectual property.

If you are the creator of, or an investor in, an original industrial design, Canadian law offers you protection from unlawful imitation of your design. The *Industrial Design Act*, like other forms of intellectual property legislation, works to protect owners while promoting the orderly exchange of information. The way to obtain such protection is to register your design with the Industrial Design Office.

Your industrial design is worth a great deal in time and money, and it may mean the success of an entire enterprise. It pays to protect your intellectual property by knowing your rights and how to use them.

Purpose of this guide

In this guide we will look at what industrial designs are, what makes them “registrable,” the advantages of registration and how to go about it. Keep in mind that this guide offers general

information only and does not cover all the complex issues that may arise throughout the registration process. It should also be noted that this guide is not an authoritative guide on Canadian law regarding industrial design.

For exact definitions and detailed regulations, consult the *Industrial Design Act*, the *Industrial Design Regulations* and legal texts on intellectual property available in many libraries. The CIPO Client Service Centre can also provide further information.

The Industrial Design Office

The office responsible for registering industrial designs is the Industrial Design Office. The Office is part of a larger agency called the Canadian Intellectual Property Office (CIPO), which is part of Industry Canada. In addition to industrial designs, CIPO is responsible for other forms of intellectual property. These are:

- **patents** — cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention;
- **copyrights** — provide protection for artistic, dramatic, musical and literary works (including computer programs), and three other subject-matter known as performances,

communication signals and sound recordings;

- **trade-marks** — are words, symbols, designs (or a combination of these), used to distinguish the wares and services of one person or organization from those of others in the marketplace;
- **integrated circuit topographies** — are the three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs.

Visit CIPO's website

CIPO's website includes useful information about its product lines, services and legislative changes. The five intellectual property guides are available, as are interactive tools that explain intellectual property in an enjoyable way. You may visit the website at www.cipo.gc.ca.

What is an industrial design?

An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. It may be, for example, the shape of a table or the shape and ornamentation of a spoon.

The design must have features that appeal to the eye. To be eligible for registration with the Industrial Design Office, your design must be original.

Other forms of intellectual property

People often confuse industrial designs with other forms of intellectual property.

A **copyright** is legal protection for an artistic endeavour. Often an industrial design is first created as a work of art, and as such, is originally protected by the *Copyright Act*. An artistic work is protected under the *Copyright Act* automatically, but a design is protected under the *Industrial Design Act* only if it is registered. Therefore, it may be a good idea to register your design, even if you have copyright protection for the original art. If you are in doubt about the appropriate course, it may be wise to consult a lawyer or a registered patent agent.

Patents are for new inventions or processes that offer innovative and useful functions. Canadian law regards the functional aspects and design aspects of articles quite separately. Therefore, you cannot list a function as an element of your industrial design. You may, however, be able to obtain a patent for your article's functional aspects and an industrial design for its aesthetic ones. Suppose you develop a new kind of folding chair. The way the chair folds, its lightweight construction, its strength and its durability are all functional qualities. The industrial design features could include the shape or configuration of the chair, and any patterns or ornamentation on it or any combination thereof.

Trade-marks are used to distinguish the goods or services of one person or organization from those of another. The shape of a product or its packaging can be an aspect that distinguishes it from someone else's product. You can register such a feature as an industrial design and later, in a separate process, as a trade-mark. Suppose, for example, you created a soft drink bottle with a unique shape. Initially, you could register this original shape with the Industrial Design Office, and later, once it has acquired distinctiveness, as a "distinguishing guise" (a type of trade-mark) with the Trade-marks Office. Keep in mind that for your bottle to be considered a trade-mark, it

must have been on the market for a sufficient period of time such that it has become recognized as **your** product (i.e. it distinguishes your product from others in the marketplace).

When to file an application

There is no time limit for filing an application as long as the design has never been published. The term “published” in this context means that the design has been made public (even to your neighbours) or offered for commercial sale or use anywhere in the world. If the design has been published, you must file within twelve months of publication.

In making a decision about whether your design can be registered, the Industrial Design Office may ask for further information. Such information may be needed if it appears that:

- the design is not applied to a fully assembled finished article or set;
- the design features are dictated solely by the article’s function; or
- the description portion of the application describes functional or manufacturing aspects rather than visual features.

Why you should register

The advantage of registering your industrial design is that it gives you exclusive rights to your design. Registration enables you to prevent others from making, importing for trade or business, renting or selling or offering or exposing for sale or rent any article in respect of which the design is registered and to which the design or a design not differing substantially therefrom has been applied, for up to ten years from the date of registration. Keep in mind that **unless you register your design**, you can make no legal claim of ownership and have no legal protection from imitation. This is different from trade-mark and copyright protection, which allow you to claim ownership even without registration.

Who can apply

Only the proprietor of a design may apply for and obtain registration for an industrial design. Usually, you are considered the proprietor if you have created the design. However, if you have been hired under contract to develop a design for someone else, then that person is the proprietor and is the only one entitled to apply for registration. If you work together with other people to create a design, you should file for registration as joint proprietors (unless you are all

working under contract or commission).

If you have acquired ownership of a design, then you may apply.

If you are an employee of a company and develop a design as part of your employment, then the employer is considered to be the proprietor. In that case only the employer may apply.

Industrial design registration is valid only if applied for and obtained in the name of the proprietor. You will save yourself time and expense by resolving the issue of ownership **before** applying for registration.

Before you file

Prior to filing an application, you may wish to conduct a search of Office records at CIPO’s Client Service Centre in Gatineau, Quebec, in order to better determine whether your design is truly new and original. Staff will explain search procedures to you but will not conduct the search for you. This will give you the opportunity to see other registered designs. You should also keep your design confidential.

What you cannot register

You cannot register the following under the *Industrial Design Act*:

- a method of construction;
- an idea;
- materials used in the construction of an article;
- the function of an article (see discussion of patents in section above); or
- colour (although one can protect a pattern created by an arrangement of contrasting tones).

How long the process takes

Pursuant to a provision of the Paris Convention, an international treaty signed by Canada, the Office does not register any design until six months after the priority date (if filed earlier in another country) or the Canadian filing date, whichever is earlier.

The Office examines applications on a first-come, first-served basis. If your application is properly prepared, registration will occur as quickly as possible. But if the application is not complete or incorrectly completed, the process will take longer, in which case the speed of registration will depend very much on how quickly you respond to queries and requests for changes.

You may be granted faster service if you believe that your design has already been imitated by someone else. In such a case, the Office will proceed with the examination as soon as you submit a request for accelerated examination and the prescribed fees. (For details about fees, see page 13.)

How long registration lasts

Registration is for a ten-year term beginning on the date of registration. However, before the expiry of five years and six months from that date, a maintenance fee must be paid or the protection will cease. Once the ten-year term has expired, anyone is free to make, import, rent or sell etc., the design in Canada.

Fees

You must pay a fee to have your application examined by the Industrial Design Office. Fees are subject to change without notice. Payment may be made by VISA, MasterCard, Interac, cheque or money order made payable to the Receiver General for Canada. (For details about fees, see page 13.)

Getting help with your application

You may file your own application for industrial design registration and the Industrial Design Office will give you the

basic information you need to do so. The Office will not, however, prepare your application or conduct a preliminary search of existing designs for you.

The Office will not express an opinion about the aesthetic or commercial merits of your design or tell you in advance of filing whether it qualifies for registration.

Drafting an application requires much careful attention to detail and knowledge of the regulations. For this reason, you may wish to hire a patent agent to prepare and “prosecute,” that is, to follow through on your application. Most industrial design applications are done in this way. Patent agents are experienced in the field.

You may obtain a list of patent agents by contacting the Client Service Centre. The Centre will not recommend any particular agent and does not regulate their fees.

Preparing your application

An application for registration of an industrial design has three basic elements which are required by the *Industrial Design Act* and *Industrial Design Regulations*:

- the application form;
- at least one drawing or photograph of the design; and
- the required fee(s).

The application form

The application must include the information prescribed by the *Industrial Design Act* and *Industrial Design Regulations*.

You will find an example of an application form in Appendix B of this guide. It may also be obtained free of charge from CIPO's website, the Client Service Centre or from a regional Industry Canada office.

Remember the following important points when you complete your application:

- Only the current proprietor can file an application. The application form includes a declaration that you are the proprietor of the design and that, to your knowledge, no one else used the design before you or the first proprietor.
- Your application form must also include your name and complete address, the title of the article, the description, and the name and address of a representative for service in Canada, if you have no office or place of business in Canada.

Send the completed application to:

Industrial Design Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9

Note: You can also submit your application electronically through the CIPO website at www.cipo.gc.ca.

Any correspondence addressed to the Industrial Design Office at CIPO Headquarters in Gatineau and delivered:

- 1** during business hours to CIPO Headquarters, will be accorded the date of receipt that day;
- 2** during business hours to Industry Canada Headquarters or to one of its regional offices, will be accorded the date of receipt in that office*;
- 3** at any time electronically, including by facsimile, will be considered to be received on the day that it is transmitted, if received before midnight, local time, at CIPO Headquarters*; or
- 4** through the Registered Mail Service of the Canada Post Corporation (CPC), will be accorded the date stamped on the envelope by CPC*.

*Only if it is also a day on which CIPO Headquarters in Gatineau is open, if not, it will be considered received on the next working day.

The title

The application must include a title that identifies the finished article to which the design is applied. It should be the common name generally known and used by the public (for example,

“lighter,” “chair,” “spoon,” “t-shirt”).

The description

Your application must include a description which identifies the features that constitute the design.

The description, along with the drawings and title, must provide an accurate picture of the design. The following information must be clearly conveyed:

- the features of the design; and
- the article of manufacture to which the design is applied.

Your description must clearly identify the features and where they reside in the article. Only visual features of the design are to be described, i.e., features of shape, configuration, pattern or ornament (or any combination of these features). The description must not refer to how the article was made, what it is made of, how it functions, its size or its dimensions.

The design may reside in the entirety of the article, or just in a portion of the article. For example, you may wish to protect the shape of the entirety of a chair or you may wish to protect only the shape of the arms of a chair.

You may choose to provide a brief description which simply but clearly states what the design

is comprised of by identifying the features and indicating if such features reside in the entire article or just in a portion of the article. For example: a) “The design consists of the features of shape of the arms of the chair as shown in the drawings.”; b) “The design consists of the features of shape, configuration, pattern and ornamentation of the entire chair as shown in the drawings.”

Or, you may choose to provide a detailed description which accurately describes features in detail using geometric or similar descriptive terminology. For example: “The design consists of generally rectangular arms with a convex upper surface and concave lower surface, a longitudinal groove extending the entire length of each arm on the outer side edges.”

Figure reference: Where the drawings or photographs contain more than one figure, a figure reference should be included at the end of the description. It serves to identify what view is seen in each figure. For example: “Figure 1 is a bottom view of the chair.”

Keep in mind that you or your agent are responsible for giving an accurate, adequate description of your design and to ensure that it covers all of the original features of your design. The Industrial Design Office will only ensure, for the purposes of

assessing registrability, that your wording is clear in conveying what the design consists of and that it accurately reflects what is shown in the drawings or photographs.

Specific things to keep in mind when writing your description:

- Reference must only be made to **visual** features, and not to features of function or construction. For example, a distinctive tread on the sole of a boot may have functional properties (to prevent slipping) as well as visual appeal (it’s in the shape of a snowflake), however, the description must refer to only those features that are visual.
- It is acceptable to highlight particularly significant features for emphasis. For example: “The design consists of the features of shape of the arms of the chair as shown in the drawings. The most significant feature is the diamond-shaped recess on the top surface of each arm.”
- Whichever method you use to describe your design, it must be clear whether the features reside in the entire article or just a portion of the article.
- Since the courts may use your description to help determine the limits of protection for your design, you should word your description with care and precision. If your description is

too broad, you may overextend the scope of the design, and it may be impossible to enforce. If it is too narrow, you may limit the scope of the design or leave out features that you intended to protect.

- More information on the subject of descriptions is available in the document entitled “Industrial Design Office Practices” on CIPO’s website.

Drawings and photographs

Your application must include at least one drawing or photograph of the design as applied to the finished article of manufacture. **The title, description and drawings must provide an accurate picture of the design.**

A) Content:

All views in the drawings or photographs must show the **complete** finished article in isolation. The article must be shown alone against a neutral (blank) background. Your drawing(s) or photograph(s) should show every feature of the design as applied to the article. You may use stippled or broken lines to disclose portions of the article that are not part of the design, but **the design must be shown in solid lines.**

The title, descriptive matter, dimensions or name should not be included on the drawing, but you may put your signature (as

proprietor) on the lower right-hand corner of each sheet.

B) Quality:

Drawings or photographs must be of sufficient quality for clear reproduction by photography, electrostatic processes, photo offset and microfilming. The features of the design as identified in the description portion of the application must be shown clearly and accurately.

C) Scale and orientation:

All drawings must be sufficiently large so that all features of the design are clear and apparent.

Generally, it is appropriate that all views have the same scale (except for enlargement views) and that all views appearing on the same page are oriented the same way. Usually, the views are arranged so that the top of each view is oriented towards the top of the page. Different views must not overlap each other.

D) Number and type of views:

Your drawings or photographs should include as many views as are necessary to adequately disclose the features of the design. The Office will request removal of unnecessary or extraneous views which would merely clutter the Register. The conventional views are: perspective, front, back, top, bottom, right side, left side.

Each view should be numbered.

They are usually referred to as: Figure 1, Figure 2, etc.

E) Miscellaneous views:

Occasionally, you will need to include the following views to adequately disclose features that cannot be shown in the conventional views: views showing open and closed positions, cross-sectional views, fragmentary views, views showing indefinite length and repeat patterns.

Remember that the purpose of the drawings or photographs is to show clearly and accurately the features of the design. More information on the requirements for drawings and photographs is available in the document entitled “Industrial Design Office Practices” on CIPO’s website.

Variants

Each industrial design application must be limited to a single design or to “variants” applied to a single article or to a set. Variants are designs which do not differ substantially from one another. To be accepted as variants, the designs must be applied to the same article or set and must possess the described features without substantial variation. You may add variants of the design to your application any time before registration.

More than one design

If you include designs in one application that differ to a

substantial degree, an objection will be issued. You will be asked by the Industrial Design Office to choose one design and delete the rest from the application. You would then have the option to file a new application (with filing fees) for any design deleted from the initial application. In this case the filing date of the new application will be the same as the initial application.

The process of obtaining a design registration is made up of six distinct phases:

- initial processing;
- classification;
- preliminary examination;
- search;
- examination; and
- registration.

Initial processing

Your application will undergo a preliminary review by staff to ensure that basic administrative requirements have been met. If the application is complete, a filing certificate will be issued; this is merely an acknowledgment that the application has been received and processed and has a filing date. It also gives you the number assigned to your application so that you can refer to that number in later correspondence.

Classification

Your application will be classified according to the particular type of article to which it relates.

Preliminary examination

Your application will undergo an assessment by an examiner to ensure that the description and drawings are clear as to what constitutes the design and what is the article. This is done for the pur-

poses of conducting a search and to ensure that the application relates to one design or to variants.

Search

Your design will be compared with previously registered designs and published designs for similarity. The results of this search will be reviewed by the examiner at the “Examination” stage.

Examination

An examiner will review your title, description, and drawings or photographs to ensure that they comply with the *Industrial Design Act* and Regulations. The examiner will review the search results to assess the originality of your design and to determine whether the design has been published for more than one year. Following this assessment, the examiner will either allow (approve) the application for registration or issue a report. The report will outline the examiner’s findings and tell you what information or amendments are required.

Amendments

If the examiner does express objections about your application, you should respond by providing the requested information or making the suggested amendments. Do not think that you must abandon your application simply

because an objection has been raised. If you do not understand the report completely, it is advisable to contact the examiner for clarification. It is also important to remember that if you make amendments to your description or drawings after filing the application or further to an examiner’s report, you may not change the design in any substantial way. If you do, the new description or drawings will be rejected. If you wanted to proceed with the amended design, you would have to submit a new application (with filing fees) which would receive a new filing date.

Appeals

If you do not rectify deficiencies in the application or overcome any outstanding objections raised in the examiner’s report(s), your application will be deemed unregistrable in a final report issued by the Office. You may appeal this final report to the Patent Appeal Board which will make recommendations to the Commissioner of Patents who will either reverse the Office decision or reaffirm it in a final rejection. If you are still not satisfied, you may appeal the final rejection to the Federal Court of Canada whose decisions are appealable, in turn, to the Supreme Court of Canada.

Conflicts

Should different people apply to register essentially the same design, the Industrial Design Office will examine the applications on a first-come, first-served basis. The application with the earlier filing date (either the Canadian filing date, or the Convention priority date, if filed earlier in another country) will be registered.

Requests for delayed registration

It is possible that you may want to delay registration. For example, you may wish to allow time to market or file your design outside Canada. You may exercise the option to delay registration at the time of filing your application or at any time before it is registered by sending a written request and the required fee. (For details about fees see page 13.)

Registration

Once approved by the examiner, your design will be registered as soon as possible, provided you have not requested that the registration be delayed. You will receive a certificate of registration which includes a copy of the application and drawing(s) or photograph(s) of the registered design. This certificate is evidence of ownership and the originality of your design.

Marking a product

You do not have to mark your design in order to indicate that it is registered as a design, but marking does give you extra protection. The proper mark is a capital “D” inside a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.

If your product is marked in this way, a court could award a remedy, such as financial compensation, in the event that someone is charged and found to be “infringing” (i.e. violating) your design. If there is no such mark, the court cannot award a remedy other than forbidding the other party from using your design (an “injunction”).

Enforcing your rights

As proprietor, you may take legal action against anyone who infringes your design in Canada. It is your responsibility to take such action and you must do so within three years of the alleged infringement. The Industrial Design Office will not assist in legal proceedings on your behalf or police your rights in any way.

Marketing rights

As the proprietor of a registered industrial design, you have the exclusive right in Canada to make, import for trade or business, rent or sell a product

incorporating that or a similar design. You may also sell all or some of your rights to others (this is referred to as an assignment) or, you can simply authorize others to use the design subject to stated conditions (this is referred to as a licence).

Assignments

An “assignment” occurs when you sell all or part of your rights in the design to another party. This party, or “assignee,” assumes your ownership rights to make, import for trade or business, rent or sell, etc., products incorporating the registered design and to authorize others to do so. Usually, the arrangement involves an exchange of money. The assignment must be in writing but there are no prescribed forms for this. You may wish to seek the assistance of a lawyer in the preparation of assignment documents.

The new owner should ensure that the assignment is recorded with the Industrial Design Office. This is done by sending a copy of the assignment document along with the fees. (For details about fees, see page 13.)

Assignments may be recorded against pending or registered designs.

Licences

In some cases, financial benefits

can come from licensing the design. When you license your design, you allow someone else to use it in accordance with the particular terms and conditions set out in the licence agreement which are negotiated between the parties. In this case, you retain ownership and, you can, in some instances, license more than one party. You may, for example, license one party for Western Canada, another for Ontario and Quebec and still another for the Maritimes. Similarly, you could have an exclusive licence with one party for the first five years and another licence with a different party for the second five-year period. As with assignments, licences should be recorded.

You may wish to seek the advice of a lawyer if arranging a licence agreement.

Registration outside Canada

Registering your design with the Industrial Design Office gives you exclusive rights in Canada only. To enjoy similar rights abroad, you must apply for them in each country separately. Most industrialized countries have equivalent industrial design protection. Links to foreign intellectual property offices are available on CIPO’s website.

It is important to note that in some countries your application

could be rejected if you or someone else has previously registered the design. To assist owners of designs in Canada in avoiding this unusual situation, the Industrial Design Office gives applicants the option of delaying registration so that their application in another country can proceed at the same time as their application in Canada.

Priority

Procedures for obtaining international design rights are partially governed by an international treaty called the Paris Convention for the Protection of Industrial Property. The Paris Convention, which has some 168 member countries, including Canada, allows applicants to invoke what is called “convention priority.” This means that someone who has filed for design registration in one Convention country has six months in which to file an application for the design in another country and be accorded the same rights as if he or she had filed in the second country on the original filing date.

Suppose, for example, you apply to register a design in Canada on January 5, 2006. You then have until July 5, 2006, to file for design rights in any other Convention country and claim convention priority in that country.

FOR MORE INFORMATION

The *Industrial Design Act* and *Industrial Design Regulations* detail the regulations that govern design rights. For electronic access, consult www.canada.justice.gc.ca.

To obtain paper copies, contact:

Canadian Government
Publishing
Public Works and
Government
Services Canada
Ottawa ON K1A 0S5

Tel.: 1 800 661-2868

Fax: 1 800 565-7757

or any bookstore that sells
federal government publications.

You can also consult or obtain
guides similar to this one on other
kinds of intellectual property (e.g.
patents, trade-marks, copyrights,
and integrated circuit topogra-
phies), on our website or directly
from the Client Service Centre.

It may be useful to consult these
guides to ensure that your work
can be protected under the
Industrial Design Act rather than
copyright, trade-mark, patent or
integrated circuit topography
laws.

For more information, contact us
through the CIPO website or con-
tact the nearest regional Industry
Canada office (shown in the blue
pages of your telephone
directory), or write to:

Client Service Centre
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9

Should you wish to obtain
information on industrial design
by telephone, call the Client
Service Centre at (819) 997-1936.

Tariff of fees

Please note that electronic certified copies and electronic copies of a document will be offered at a date still to be determined.

Since January 1, 2004, a fee is required for the following services:

Delaying registration

A request to delay the registration of an industrial design is processed upon payment of the prescribed fee, shown as item 9 on this page. This will apply in cases where an applicant requests to delay the registration of an application which otherwise would normally proceed with registration. This will not apply in situations relating to parent or divisional applications or similar designs filed by the same applicant, provided that the applicant has notified the Industrial Design Office of the existence of such co-pending applications. In these situations, the usual practice of the Office is to register such applications on the same day.

Reinstatement of an abandoned application

In accordance with subsection 5(4) of the *Industrial Design Act*, an abandoned application is reinstated if, within the prescribed period, the applicant submits a request for reinstatement along

with a reply to the objections to registration, and pays the prescribed fee, shown as item 10 on this page.

Issuance of a correcting certificate required as a result of an error not committed by the Office

A certificate of correction is issued upon payment of the prescribed fee, shown as item 11 on this page.

Processing a request for accelerated examination of an application to register a design

The Industrial Design Office continues to process requests for accelerated examination in cases of suspected infringement upon payment of the prescribed fee, shown as item 12 on this page.

1 Examination of an application to register a design pursuant to subsection 4(1) of the Act,

(a) basic fee.....\$400
(b) plus, for each page of drawings in excess of 10 pages.....\$10

2 Maintenance of a registration of a design pursuant to subsection 18(1) or (2).....\$350

3 Maintenance of a registration of a design pursuant to subsection 18(2).....\$50

4 Recording an assignment or any document affecting a design pursuant to subsection 13(1) of the Act, for each design.....\$100

5 Providing a copy in paper form of a document, for each page,
(a) where the user of the service makes the copy using Office

equipment.....\$0.50
(b) where the Office makes the copy.....\$1

6 Providing a copy in electronic form of a document,

(a) for each request.....\$10
(b) plus, for each design to which the request relates.....\$10
(c) plus, if the copy is requested on a physical medium, for each physical medium requested in addition to the first.....\$10

7 Providing a certified copy in paper form of a document,

(a) for each certification.....\$35
(b) plus, for each page.....\$1

8 Providing a certified copy in electronic form of a document,
(a) for each certification.....\$35
(b) plus, for each design to which the request relates.....\$10

9 Delaying registration.....\$100

10 Reinstatement of an abandoned application.....\$200

11 Issuance of a correcting certificate required as a result of an error not committed by the Office.....\$50

12 Processing a request for accelerated examination of an application to register a design.....\$500

Q1. What is an industrial design?

A An industrial design is the features of shape, configuration, pattern or ornament (or any combination thereof) applied to a finished article. It may be, for example, the shape of a table or the ornamentation on the handle of a spoon. The article can be made by hand, tool or machine.

Q2. Must I register my industrial design in order to be protected?

A Yes, there is no protection without registration. Once registered, industrial designs are available for public inspection. Keep in mind that it is best to apply for registration before marketing your product.

Q3. How long does registration last?

A Obtaining registration for an industrial design will give you exclusive rights for a period of ten years from the date of registration, provided that you pay a maintenance fee before expiry of the first five years plus six months of the registration.

Q4. What cannot be protected by an industrial design?

A The following cannot be protected:

- the functional features of an article;
- a principle of construction, or how an article is built;
- the materials used in the construction of an article;
- colour per se; or

■ ideas.

Q5. If I register my design in Canada, am I protected in other countries?

A No. You can obtain protection in other countries only by filing in each country separately.

Q6. Is there a time limit for filing an application for registration?

A No, unless there has been “publication” (i.e. the design has been made public or offered for commercial sale or use anywhere in the world). In that case, you must file an application within twelve months of the publication date.

Q7. What do I need in order to apply for industrial design registration?

A You should send a completed application form, at least one drawing or photograph and the fees. The form entitled “Application for Registration of an Industrial Design,” is included in Appendix B of this guide. Electronic filing is also possible via our website.

Q8. What type of description do I need to include?

A The description does not have to detail every aspect of the design, but it must state clearly what the design is. You should describe the visual aspects of the design only, i.e., shape, configuration, pattern or ornament (or any combination thereof). Do not refer to how the article functions or performs. For a more detailed

explanation of descriptions, consult the document entitled “Industrial Design Office Practices” available on our website.

Q9. What type of drawings or photographs are necessary?

A Whether you submit drawings or photographs, they must show the design features clearly and be easy to reproduce by photography, electrostatic processes, photo offset and microfilming. They should be of a sufficiently large scale to clearly show the design features and should include as many views as are necessary to disclose all design features.

Q10. If I have a registered design, do I have to put any marking on the articles to indicate this?

A Marking is not required. However, it is helpful in the event of a court proceeding. If there is no mark, the court cannot award a remedy other than an injunction, which will prevent further infringement on your design. The proper mark is a capital “D” in a circle and the name, or abbreviation thereof, of the design’s proprietor on the article, its label or packaging.

Q11. If I see a good design outside Canada and it does not appear to be on the market in Canada, can I register that design under my name here?

A You could apply for the design in Canada only if you have acquired ownership of the design and it has not been published anywhere in the world for more than

one year.

Q12. *How will the Industrial Design Office know if I did not originate the design?*

A A search is done through records of registered Canadian designs and published art to determine whether anyone else already owns the design, or one so similar that yours would be considered an imitation. If so, your application will not be acceptable for registration. If the search does not disclose a similar design, your declaration of originality will be accepted and the design registered, provided all other requirements are met. It should also be noted that the courts have the power to overturn an invalid declaration at a later date.

Q13. *Can anyone do a search through the Industrial Design Office records to see what has been registered previously?*

A Yes, anyone can conduct a search free of charge. All materials are located in the search room at the Client Service Centre, in Gatineau, Quebec. Staff will give you the basic information you need to do the search. You may also obtain copies of drawings and other documents at a nominal fee (see the previous section entitled *Tariff of fees*).

Q14. *May non-Canadians register their designs in Canada?*

A Yes, provided that Canadian requirements are met. Registrations in other countries offer no protection in Canada.

Q15. *If I sell or purchase rights to a design, do I need to inform the Industrial Design Office?*

A It is advisable to register the sale of rights, or “assignment,” as it is known, with the Industrial Design Office. Many legal text writers have expressed the opinion that registration of an assignment would be necessary before the new owner could sue anyone for infringing the design.

Q16. *Would the Industrial Design Office stop someone else from infringing my design?*

A No. This responsibility rests with the owner of the design. You must start any legal action within three years of the alleged offence.

Q17. *Can I get help in filing an application for industrial design protection?*

A Yes. Information on procedures for filing an application can be obtained from the Client Service Centre. Also, there are registered patent agents you can consult who have experience in this area. Look for them in the yellow pages of the telephone book under “Patent Agents,” or write to the Client Service Centre (see section entitled “For more information” on page 12).

APPENDIX B — INDUSTRIAL DESIGN FORMS



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Gatineau (Québec) K1A 0C9
Téléphone : (819) 997-1936
Télécopieur : (819) 953-6977
Internet : www.opic.gc.ca

Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-6977
Internet: www.cipo.gc.ca

DEMANDE D'ENREGISTREMENT D'UN DESSIN INDUSTRIEL

APPLICATION FOR REGISTRATION OF AN INDUSTRIAL DESIGN

Le demandeur,
The applicant,

(nom du demandeur / name of applicant)

dont l'adresse complète est
whose complete address is

demande l'enregistrement d'un dessin pour un(e)
hereby requests registration of a design for a(n)

(désignation de l'objet / title identifying article)

dont il est le propriétaire,
of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage
lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the
time the design was adopted by the first proprietor.

Description du dessin :
Description of the design:

Canada

OPIC - CIPD 45 (02-2006)

OPIC  CIPD



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

À remplir seulement si le demandeur a un mandataire
To be completed only if the applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
**REPRÉSENTANT AUX FINS DE
SIGNIFICATION** au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Gatineau (Québec) K1A 0C9
Téléphone : (819) 997-1936
Télécopieur : (819) 953-6977
Internet : www.opic.gc.ca

Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-6977
Internet: www.cipo.gc.ca

Canada

OPIC - CIPQ 86 (02-2006)



Abandonment

An application for an industrial design will be considered abandoned if the applicant fails to reply within the specified time to any report which sets out objections to registration.

Application

The formal request for an industrial design. The application has three basic elements: the application form, at least one drawing or photograph of the design, and the fees.

Assignment

The transfer of design rights from the owner to another party.

Canadian filing date

The date your completed application is officially received at the Industrial Design Office.

Canadian Intellectual Property Office (CIPO)

The federal government agency responsible for industrial designs and other forms of intellectual property, including patents, trade-marks, copyrights and integrated circuit topographies.

Certificate of registration

Official confirmation that your design has been registered.

Convention priority

Convention priority applies in countries (including Canada) that have signed an international treaty called the Paris Convention. It is a protocol that gives an

applicant six months from the filing date in one country to subsequently file an application in another country such that the subsequent application is considered as if it had been filed on the earlier date.

Copyright

Protection for artistic, dramatic, musical or literary works (including computer programs), and three other subject-matter known as: performances, sound recordings and communication signals.

Declaration

Formal statement that you are the proprietor (see definition) of the design and that, to your knowledge, no one else was using the design when you created it.

Description

A description is a basic requirement of an application for an industrial design. It identifies the features of shape, configuration, pattern or ornament that comprise the design, and indicates whether the design resides in the entire article or a portion.

Drawings

Drawings and photographs disclose the industrial design and are a basic requirement of a design application.

Examination

The process through which the Industrial Design Office determines whether a design warrants

registration. The main objective is to determine that the design is indeed design subject-matter, that it is original and that the documentation meets the requirements of the Act and Regulations.

Industrial design

The visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

Industrial Design Act

Federal legislation governing registration and ownership of industrial designs in Canada.

Industrial Design Office

The office within the Canadian Intellectual Property Office responsible for the registration of industrial designs.

Infringement

Violation of industrial design rights through unauthorized use of a design.

Licensing

The granting from the owner of a design to another party of certain rights related to the design. This may include such things as the right to use, manufacture and sell the design.

Maintenance fee

Fee required in order to maintain the rights to an industrial design for a second five-year period.

Marking

Signalling that a design is registered by placing a capital “D” in a circle — along with the name, or abbreviation thereof, of the design’s proprietor on the object to which the design has been applied, or to its label or packaging.

Paris Convention for the Protection of Industrial Property

An international treaty on intellectual property signed by some 168 nations, including Canada.

Patent

Covers new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention.

Proprietor

The proprietor of an industrial design is the owner of the design. This can be the person who created it or who paid to have it created or who bought the design rights from the owner.

Publication

Publication of a design is the act of making it public or available for commercial sale or use anywhere in the world.

Registration

The granting of exclusive rights in an industrial design by the Industrial Design Office. This provides protection against imitation and unauthorized use of the

design effective from the date of registration.

Representative for service

A person in Canada appointed by the applicant to receive documents on his/her behalf if the applicant has no place of business in Canada.

Search

The act of searching through registered and published designs to verify whether a design is original or whether it has been published for more than one year.

Trade-mark

A word, symbol or design (or a combination of these), used to distinguish the wares or services of one person or organization from those of others in the marketplace.



**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

Government
Publications

How Your Industrial Design Application is Processed

You can obtain further information
concerning your application for
registration by:

Telephone: (819) 997-1936

Fax: (819) 953-6977

If you have already obtained a
registration number from our Office
and you would like further
information concerning your file,
please indicate your registration or
file number when making any new
request for service relating to your
file.

Note: A large number of applicants
seeking industrial design protection
are represented by a registered
patent agent. When an agent has
been appointed, the Office will
address all correspondence to the
agent.

Enquiries concerning the various
phases of prosecution should,
therefore, be directed to the
appointed agent.

Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Formalities (processing)	If the application is complete and the prescribed fees paid, a filing date and application number are assigned and file and index cards are created. The application will then proceed to classification and examination.	A filing certificate will be sent showing the date of filing and the application number.	... within 4 weeks of receipt of application.	\$400 basic fee, plus \$10 for each page of drawings in excess of 10 pages.
	If the application is incomplete (missing declaration, title, description, fees or drawings), the application is placed on hold and you will not receive a filing date until it is complete.	A report will be sent describing why the application is incomplete.	... within 4 weeks of receipt of application.	
Classification	If it is clear what the article is, your application is classified according to the <i>Canadian Industrial Design Classification Manual</i> .	No notification is sent to the client.		none
	If it is not clear, the application is placed on hold until more information can be obtained from you about the article.	A report will be sent requesting more information.	... within 2 weeks of preliminary classification.	none
	If the application does not constitute registrable subject-matter, classification and examination do not take place.	You will be advised by phone or by letter and given the opportunity to submit arguments or withdraw the application.	... within 1 week of classification.	none
Examination	A search of registered designs and published art is conducted, the design is assessed to determine originality, and the application is checked for conformity to the requirements of the <i>Industrial Design Act</i> and Regulations.	No notification is sent to the client.	... within 9 months of receipt of application.	See fees at Formalities stage.
	If all requirements are met, the application is allowable for registration. (see Allowance) If the application is not acceptable, the examiner will explain the reason(s). You may respond by making amendments or by submitting arguments against the examiner's objections. Such submissions are reviewed by the examiner and if the application is still not acceptable, the examiner will contact you again to explain the reasons.	You will receive an examiner's report.	A first report will be issued within 9 months of receipt of application. Subsequent examiners' reports will be issued within 1 month of receipt of your amendments or comments.	No fee is required for amendments.

Canada

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CIPO



OPIC

Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Allowance	<p>If all requirements are met, the application is allowable for registration. (An international treaty requires that the Office not register before the expiration of a 6-month period from the filing date or the priority date where priority is claimed. Thus, in cases of infringement where the application has been allowed before the 6-month date, the file will not be registered until the 6-month period has elapsed.)</p> <p>A final pre-registration search will be done to ensure that there is not a similar pending design with a prior date of filing.</p>	<p>Notification is given only upon request, in which case you would be notified by telephone.</p> <p>If such prior art exists, you will be notified by an examiner's report.</p>	<p>On request, a telephone call will be made within 1 day of request.</p> <p>... within 1 month of the allowance date.</p>	none
Final report	<p>If objections by the examiner are not overcome by your arguments, the examiner will advise you that the application remains unacceptable for registration and that you may request a review by the Patent Appeal Board.</p> <p>(If your appeal is rejected, you may take your case to the Federal Court within a limited time.)</p>	You will receive a final report.	... within 1 month of receipt of your last submission.	none
Registration	The processing clerk assigns a registration number and the certificate of registration is prepared. The certificate and attachments are microfilmed before being sent to you.	The certificate of registration will be mailed.	... within 2 weeks from the registration date.	none
Abandonment	If you fail to respond to a report by the specified deadline, the file will be retrieved and your application will be considered abandoned.	A notification of abandonment will be issued.	... within 2 weeks of the file being identified for abandonment.	none
Reinstatement	<p>If you write to request reinstatement of an abandoned application and respond to any outstanding report, the file is retrieved and put back in process.</p> <p>The request for reinstatement must be received within 6 months of the date of abandonment.</p>	No notification is sent to the client.	Reinstatement will occur within 2 weeks of receipt of the request in the Office.	\$200
Assignment	Assignments may be processed during or after examination and registration. The chain of title and assignment document are verified and a transaction certificate is prepared.	The transaction certificate will be sent out with the assignment document.	... within 1 week of receipt of the assignment.	\$100 for each design affected by the assignment.
Request for delay of registration	If you wish to delay registration in order to allow filing in another country, you should advise the Office in writing. A note will be placed on the file and the examination process continues. If the application is in an allowable state, it will be held from registration for a specified period of time.	Notification will only be sent upon request.	... within 1 week of receipt of the request.	\$100
Request for extension of time to respond to a report	Upon receipt of your written request, an extension of up to 4 months will normally be granted. The report will be stamped indicating an extension date.	You will receive a stamped copy of your letter confirming the extension date.	... within 1 week of receipt of the request.	none
Request for accelerated action	Upon receipt of your written request, which provides details regarding the alleged infringement, the application will proceed to examination immediately for action. (see Allowance regarding earliest possible registration)	You will be advised by telephone if the examination will be accelerated.	... within 1 week of receipt of the request.	\$500
Maintenance of a design registration	<p>Your registration will be maintained upon receipt of the maintenance fee. This will continue the registration for the remaining 5 years of the 10-year period.</p> <p><i>(Please make all cheques payable to the Receiver General for Canada.)</i></p>	You will receive a maintenance certificate.	... within 1 week of receipt of the fee.	<p>\$350 if request is received within 5 years of registration date.</p> <p>\$400 if request is received within the 6 months following the 5-year period.</p>

**A more extensive
Guide to Industrial Designs
is available free of charge from:**

IC no. 11370 E
IF no. 11371 F

Client Service Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9

Telephone: (819) 997-1936
Fax: (819) 953-7620

Internet: www.cipo.gc.ca
Email: cipo.contact@ic.gc.ca

**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

À remplir seulement si le demandeur a un mandataire
To be completed only if the applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
**REPRÉSENTANT AUX FINS DE
SIGNIFICATION** au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Gatineau (Québec) K1A 0C9
Téléphone : (819) 997-1936
Télécopieur : (819) 953-6977
Internet : www.opic.gc.ca

Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-6977
Internet: www.cipo.gc.ca



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Canadian
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Facsimile: (819) 953-6977
Internet: www.cipo.gc.ca

**DEMANDE D'ENREGISTREMENT
D'UN DESSIN INDUSTRIEL**

**APPLICATION FOR REGISTRATION
OF AN INDUSTRIAL DESIGN**

Le demandeur,
The applicant,

(nom du demandeur / name of applicant)

dont l'adresse complète est
whose complete address is

demande l'enregistrement d'un dessin pour un(e)
hereby requests registration of a design for a(n)

(désignation de l'objet / title identifying article)

dont il est le propriétaire.
of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage
lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the
time the design was adopted by the first proprietor.

Description du dessin :
Description of the design:

OPIC  CIFO

Canadian Intellectual Property Office (CIPO)

A GUIDE TO INDUSTRIAL DESIGNS

This publication is available electronically on CIPO's Web site at:
www.cipo.gc.ca

This publication can be made available in alternative formats upon request.

For further information please contact the:

Client Service Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Room C-229, 2nd Floor
Hull, Quebec K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-7620
Internet: www.cipo.gc.ca
E-mail: cipo.contact@ic.gc.ca

Business hours: 8:00 a.m. to 4:45 p.m.

Copies of this publication can be obtained from the:

Publications Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 953-5054
Facsimile: (819) 953-8998

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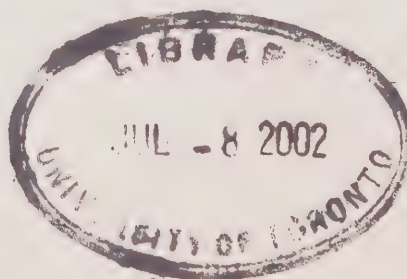
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The information in this booklet is to be considered solely as a guide and should not be quoted as or considered to be a legal authority. It may become obsolete in whole or in part at any time without notice. Authority must be found in the *Industrial Design Act*, the *Industrial Design Regulations*, and in decisions of the courts interpreting them.

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A GUIDE TO INDUSTRIAL DESIGNS



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A well-designed chair is not just a pleasure to sit on, but a pleasure to look at as well. This can be said for almost every manufactured product: its success in the marketplace will depend not only on its functionality, but on its visual appeal as well. That is why manufacturers invest a great deal of money and know-how in industrial design and why an original design is considered valuable intellectual property.

If you are the creator of, or an investor in, an original industrial design, Canadian law offers you protection from unlawful imitation of your design. The *Industrial Design Act*, like other forms of intellectual property legislation, works to protect owners while promoting the orderly exchange of information. The way to obtain such protection is to register your design with the Canadian Industrial Design Office.

Your industrial design is worth a great deal in time and money, and it may mean the success of an entire enterprise. It pays to protect your intellectual property by knowing your rights and how to use them.

Purpose of this guide

In this guide we will look at what industrial designs are, what makes them “registerable,” the advantages of registration and how to go about it. Keep in mind

that this guide offers general information only and does not cover all the complex issues that may arise throughout the registration procedures. It should also be noted that this guide is not an authoritative guide on Canadian law regarding industrial design.

For exact definitions and detailed regulations, consult the *Industrial Design Act*, the *Industrial Design Regulations* and legal texts on intellectual property available in many libraries. The CIPO Client Service Centre can also provide further information.

The Canadian Industrial Design Office

The office responsible for registering industrial designs is the Canadian Industrial Design Office. The Office is part of a larger agency called the Canadian Intellectual Property Office (CIPO), which is part of Industry Canada. In addition to industrial designs, CIPO is responsible for other forms of intellectual property. These are:

■ **patents**—cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention;

■ **copyrights**—provide protection for artistic, dramatic, musical and literary works (including computer programs), and three other subject-matter known as performances, communication signals and sound recordings;

■ **trade-marks**—are words, symbols, designs (or a combination of these), used to distinguish the wares and services of one person or organization from those of others in the marketplace;

■ **integrated circuit topographies**—are the three-dimensional configurations of electronic circuits embodied in integrated circuit products or layout designs.

Visit CIPO's Web site

CIPO's Web site includes useful information about its product lines, services and legislative changes. The five intellectual property guides are available, as are interactive tools that explain intellectual property in an enjoyable way. You may visit the Web site at the following address:
www.cipo.gc.ca

Also, you can now submit your industrial design application electronically via the CIPO Web site.

What is an industrial design ?

An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. It may be, for example, the shape of a table or the shape and ornamentation of a spoon.

The design must have features that appeal to the eye and although the Design Office will not judge the aesthetic merit of those features, the Office will assess originality.

Other forms of intellectual property

People often confuse industrial designs with other forms of intellectual property.

A **copyright** is legal protection for an artistic endeavour. Often an industrial design is first created as a work of art, and as such, is originally protected by the *Copyright Act*. An artistic work is protected under the *Copyright Act* automatically, but a design is protected under the *Industrial Design Act* only if it is registered. Therefore, it may be a good idea to register your design, even if you have copyright protection for the original art. If you are in doubt about the appropriate course, it may be wise to consult a lawyer or a registered patent agent.

Patents are for new inventions or processes that offer innovative and useful functions. Canadian law regards the functional aspects and design aspects of articles quite separately. Therefore, you cannot list a function as an element of your industrial design. You may, however, be able to obtain a patent for your article's functional aspects and an industrial design for its aesthetic ones. Suppose you develop a new kind of folding chair. The way the chair folds, its lightweight construction, its strength and its durability are all functional qualities. The industrial design features could include the shape or configuration of the chair, and any patterns or ornamentation on it or any combination thereof.

Trade-marks are used to distinguish the goods or services of one person or organization from those of another. The shape of a product or its packaging can be an aspect that distinguishes it from someone else's product. You can register such a feature as an industrial design and later, in a separate process, as a trade-mark. Suppose, for example, you created a soft drink bottle with a unique shape. Initially, you could register this original shape with the Industrial Design Office, and later, once it has acquired distinctiveness, as a "distinguishing guise" (a type of trade-mark) with the Trade-marks Office. Keep in mind that for your bottle

to be considered a trade-mark, it must have been on the market for a sufficient period of time such that it has become recognized as **your** product (i.e. it distinguishes your product from others in the marketplace).

To be eligible for registration with the Industrial Design Office your design must be substantially original.

When to file an application

There is no time limit for filing an application as long as the design has never been published. The term "published" in this context means that the design has been made public (even to your neighbours) or offered for commercial sale or use anywhere in the world. It is best to file as quickly as possible if publication has occurred. You must file within twelve months of publication or you will lose your exclusive rights to the design.

In making a decision about whether your design can be registered, the Industrial Design Office may ask for further information. Such information may be needed if it appears that:

- the design is not applied to a fully assembled finished article or set;
- users will never see the article or design in the form disclosed by the application;
- the design features are dictated solely by how the article is used;
- the description portion of the application describes functional or manufacturing aspects rather than design features.

Why you should register

The advantage of registering your industrial design is that it gives you exclusive rights to your design. Registration enables you to prevent others from making, importing for trade or business, renting or selling or offering or exposing for sale or rent any article in respect of which the design is registered and to which the design or a design not differing substantially therefrom has been applied, for up to ten years from the date of registration. Keep in mind that, **unless you register your design**, you can make no legal claim of ownership and have no legal protection from imitation. This is different from trade-mark and copyright protection, which allow you to claim ownership even without registration.

Who can apply

Only the proprietor of a design may apply for and obtain registration for an industrial design. Usually, you are considered the proprietor if you have created the design. However, if you've been hired under contract to develop a design for someone else, then that person is the proprietor and is the only one entitled to apply for registration. If you work together with other people to create a design, you should file for

registration as joint proprietors (unless you are all working under contract or commission).

If you have acquired ownership of a design then you may apply.

If you are an employee of a company and develop a design as part of your employment, then the employer may be the proprietor. In that case only the employer may apply.

Industrial design registration is valid only if applied for and obtained in the name of the proprietor. You will save yourself time and expense by resolving the issue of ownership **before** applying for registration.

Before you file

Prior to filing an application, you may wish to conduct a search of Office records at the CIPO Client Service Centre in Hull, Quebec, in order to better determine whether your design is truly new and original. Staff will explain search procedures to you but will not conduct the search for you. This will give you the opportunity to see other registered designs. You should also keep your design confidential.

What you cannot register

You cannot register the following under the *Industrial Design Act*:

- designs that are utilitarian only and which are not intended to provide visual appeal;
- designs that have no fixed appearance (for example, holograms);
- designs for components that are not clearly visible (for example, features that are hidden from view or features that are too small to have appeal to the eye);
- a method of construction;
- an idea;
- materials used in the construction of an article;
- the useful function of the article (see discussion of patents in section above); or
- colour (although one can protect a pattern that may be created by an arrangement of contrasting tones).

How long the process takes

Pursuant to a provision of the *Paris Convention*, an international treaty signed by Canada, the Office does not register any design until six months after the date of filing. Normally, it takes between eight and twelve months to have your application examined.

The Office examines applications on a first-come, first-served basis. If your application is properly prepared, registration will occur as quickly as possible. But if the application is not complete or incorrectly completed, the process will take longer, in which case the speed of registration will depend very much on how quickly you respond to queries and requests for changes.

You may be granted faster service if you believe that your design has already been imitated by someone else. In such a case, the Office will proceed with examination as soon as you notify the Office in writing, providing details of the infringement.

How long registration lasts

Registration is for a ten-year term beginning on the date of registration. However, before the expiry of five years from that date, a maintenance fee must be paid or the protection will cease. Once the ten-year term has expired, anyone is free to make, import, rent or sell etc., the design in Canada.

Fees

You must pay a fee to have your application examined by the Industrial Design Office. There are additional fees for maintenance and late payment of the maintenance fee of designs. Fees

are subject to change without notice. Payment may be made by VISA, MasterCard, Interac, cheque or money order made payable to the Receiver General for Canada. (For details about Fees, see page 15.)

Getting help with your application

You may file your own application for industrial design registration, and the Industrial Design Office will give you the basic information you need to do so. The Office will not, however, prepare your application or conduct a preliminary search of existing designs for you.

The Office will not express an opinion about the aesthetic or commercial merits of your design or tell you in advance of filing whether it qualifies for registration.

Drafting an application requires much careful attention to detail and knowledge of the regulations. For this reason, you may wish to hire a patent agent to prepare and “prosecute”, that is, to follow through on your application. Most industrial design applications are done in this way. Patent agents are experienced in the field.

You may obtain a list of patent agents by contacting the Client Service Centre. The Centre will not recommend any particular agent and does not regulate their fees.

Preparing your application

An application for registration of an industrial design has three basic elements which are required by the *Industrial Design Act* and *Industrial Design Regulations*:

- the application form;
- at least one drawing or photograph of the design; and
- the required fee(s).

The application must be made in the form prescribed by the *Industrial Design Act* and *Industrial Design Regulations* which may be obtained free of charge from the CIPO Web site, from the Client Service Centre or from a regional Industry Canada office. Samples of the various forms are shown at the end of this guide. If you choose to reproduce the application form, it must contain the same wording as the original.

The application form

You will find an example of a blank application form in Appendix B of this guide.

Remember the following important points when you complete your application:

- Only the current proprietor can file an application. The application form includes a declaration that you are the proprietor of the design and that, to your knowledge, no one else used the

design before you or the first proprietor.

- Your application form must also include your name and complete address, the title of the article, the description, and the name and address of a representative for service in Canada, if you have no office or place of business in Canada.

- If you do not have enough room to complete your description on the first page of the application form, please continue on a separate sheet of paper. Do not finish the description on the back of the form.

Send the completed application to:

Industrial Design Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9

Note: You can also submit your application electronically.

Any correspondence addressed to the Industrial Design Office at CIPO Headquarters in Hull and delivered:

- 1** During business hours to CIPO Headquarters, will be accorded the date of receipt that day.
- 2** During business hours to Industry Canada Headquarters or to one of its regional offices, will be accorded the date of receipt in that office*.

- 3** At any time electronically, including by facsimile, will be considered to be received on the day that it is transmitted, if received before midnight, local time, at CIPO Headquarters*.

- 4** Through the Registered Mail Service of the Canada Post Corporation (CPC), will be accorded the date stamped on the envelope by CPC*.

* Only if it is also a day on which CIPO Headquarters in Hull is open, if not, it will be considered received on the next working day.

The title

The application must include a title that identifies the finished article to which the design is applied. It should be the common name used in the trade (for example, “lighter”, “chair”, “spoon”, “t-shirt”).

The description

An industrial design is the features of shape, configuration, pattern or ornament (or a combination of these features) applied to a finished article of manufacture.

Your application must include a description which identifies the features that constitute the design.

The description, along with the drawings and title, must provide an accurate picture of the design. The following information must be clearly conveyed:

- the features of the design;
- the article of manufacture to which the design is applied.

Your description must clearly identify the features and where they reside in the article. Only visual features of the design are to be described, i.e., features of shape, configuration, pattern or ornament (or any combination of these features). It should not refer to how the article was made, what it is made of, how it functions, its size or its dimensions.

The design may reside in the entirety of the article, or just in a portion of the article. For example, you may wish to protect the shape of the entirety of a chair, or, you may wish to protect only the shape of the arms of a chair.

You may choose to provide a detailed description which accurately describes features in detail using geometric or similar descriptive terminology. For example: “The design consists of generally rectangular arms with a convex upper surface and concave lower surface, a longitudinal groove extending the entire length of each arm on the outer side edges.”

Or, you may choose to provide a brief description which simply but clearly states what the design is comprised of by identifying the features and indicating if such features reside in the entire article or just in a portion of the article. For example: a) “The design consists of the features of shape of the arms of the chair as shown in the drawings.” b) “The design consists of the features of shape, configuration, pattern and ornamentation of the entire chair as shown in the drawings.” (See the Office Practice Notice on “Descriptions” for more examples.)

Figure reference: Where the drawings or photographs contain more than one figure, a figure reference should be included at the end of the description. It serves to identify what view is seen in each figure. For example: “Figure 1 is a bottom view of the chair.”

Keep in mind that you or your agent are responsible for giving an accurate, adequate description

of your design and to ensure that it covers all of the original features of your design. The Industrial Design Office will only ensure, for the purposes of assessing registrability, that your wording is clear in conveying what the design consists of and that it accurately reflects what is shown in the drawings or photographs.

Specific things to keep in mind when writing your description:

■ Reference should only be made to **visual** features, and not to features of function or construction. For example, a distinctive tread on the sole of a boot may have functional properties (to prevent slipping) as well as visual appeal (it’s in the shape of a snowflake).

■ It is acceptable to highlight particularly significant features for emphasis. For example: “The design consists of the features of shape of the arms of the chair as shown in the drawings. The most significant feature is the diamond shaped recess on the top surface of each arm.”

■ Whichever method you use to describe your design, it must be clear whether the features reside in the entire article or just a portion of the article.

■ Since the courts may use your description to help determine the limits of protection for your design, you should word your description with care and

precision. If your description is too broad, you may over-extend the scope of the design, and it may be impossible to enforce. If it is too narrow, you may limit the scope of the design or leave out features that you intended to protect.

■ More information on how to write descriptions is contained in the Office Practice Notice on “Descriptions” which is available on CIPO’s Web site and copies can also be obtained from the Client Service Centre.

Drawings and photographs

Your application must include at least one drawing or photograph of the design as applied to the finished article of manufacture.

The title, description and drawings must provide an accurate picture of the design.

A) Colour, size and quality:

Drawings must be in clear, permanent black lines on white paper. Photographs must be black and white. Colour will not be accepted. However, it is acceptable to show contrasting tone, or to use shading to give a better sense of the shape or contour.

Each sheet must be at least 21 cm x 28 cm (8” x 11”), but not more than 22 cm x 35 cm (8 1/2” x 14”). A 2.54 cm one-inch space must be left at the top and left-hand margins of each sheet.

Drawings or photographs must **not** be mounted on any other paper or surface and must be of sufficient quality for clear reproduction by photography, electrostatic processes, photo offset and microfilming. The features of the design as identified in the description portion of the application must be shown clearly and accurately.

B) Scale and orientation:

All drawings must be sufficiently large so that all features of the design are clear and apparent.

Generally, it is appropriate that all views have the same scale (except for enlargement views) and that all views appearing on the same page are oriented the same way. Usually, the views are arranged so that the top of each view is oriented towards the top of the page. Another option, however, is to turn the page sideways and present all views with the top oriented towards one side. Different views must not overlap each other.

C) Content:

All views in the drawings or photographs must show the **complete** finished article in isolation. The article must be shown alone against a neutral (blank) background. Your drawing(s) or photograph(s) should show every feature of the design as applied to the article. You may use stippled or broken lines to disclose portions of the article that are not part of the

design, but **the design must be shown in solid lines.**

Stippled lines must **not** be used to show:

- hidden portions of the article;
- indefinite length (exception: fabric and paper products);
- a position movement of the article;
- open position of the article;
- separation of pieces of the article.

The title, descriptive matter, dimensions or names should not be included on the drawing, but you may put your signature (as proprietor) on the lower right-hand corner of each sheet.

D) Number and type of views:

Your drawings or photographs should include as many views as are necessary to adequately disclose the features of the design. The Office will request removal of unnecessary or extraneous views which would merely clutter the Register. The conventional views are: perspective, front, back, top, bottom, right side, left side.

Each view should be numbered. They are usually referred to as: Figure 1, Figure 2, etc. (*When the drawings or photographs contain more than one figure, detailed figure references should be provided at the end of the description which indicate which view is seen in each figure, e.g., “Figure 1 is a perspective view of the design.”*)

E) Miscellaneous views:

Occasionally, you will need to include the following views to adequately disclose features that cannot be shown in the conventional views: views showing open and closed positions, cross-sectional views, fragmentary views, views showing indefinite length and repeat patterns.

Your drawings or photographs may show views of the article in both open and closed positions or in extended and retracted positions if such views are necessary to reveal design features referred to in the description and if the article is normally seen and used in these different positions.

You may present cross-sectional or fragmentary views if this is necessary to show the exterior profile of the article not seen in other views. Indicate the exposed cut surface by oblique parallel sectional lines in the cross-sectional view. Always show where such views are taken from on the complete article. Do not use symbolic section lines to suggest a specific type of material. Indefinite length is shown by illustrating a break in the article dividing it into two portions.

If your article is made up of a number of components, the drawings or photographs should show the completely assembled article. Do not present exploded views.

Remember the purpose of the drawings or photographs is to show clearly and accurately the features of the design. More information on the requirements for drawings and photographs is available in the Office Practice Notices and the Industrial Design Examination Procedures Manual which are available on CIPO's Web site or may be obtained from the Client Service Centre.

Sample drawings

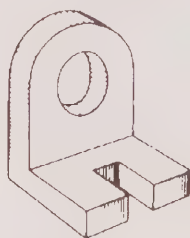


Fig. 1

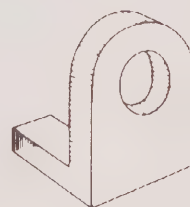


Fig. 2

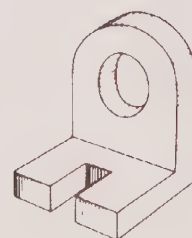


Fig. 3

(Perspective views)



Fig. 4
(side)

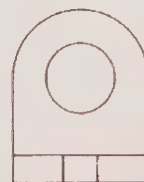


Fig. 5
(front)



Fig. 6
(top)

Variants of the same design

Each industrial design application must be limited to a single design or to “variants”. Variants are designs which do not differ substantially from one another. To be accepted as variants, the designs must be applied to the same article, and must possess the described features without substantial variation. You may add variants of the design to your application any time before registration.

If you include designs in one application that differ to a substantial degree, an objection will be issued. You will be asked by the Industrial Design Office to choose one design and delete the rest from the application. You would then have the option to file a new application (with filing fee) for any design deleted from the initial application. In this case the filing date of the new application will be the same as the original application.

It is also important to remember that if you make amendments to your description or drawings after filing the application, you may not change the design in any substantial way. If you do, the new description or drawings will be rejected. If you wanted to proceed with the amended design, you would have to submit a new application which would receive a new filing date.

The process of obtaining a design registration is made up of three distinct phases:

- initial processing (when you first file the application);
- examination;
- registration.

Initial processing

Your application will undergo a preliminary review by staff to ensure that basic administrative requirements have been met. If the application is complete a filing certificate will be issued; this is merely an acknowledgment that the application has been received and processed and a filing date issued. It also gives you the number assigned to your application so that you can refer to that number in later correspondence. If the application is incomplete you will also receive a report, advising you of what is required to complete it.

Every report issued by the Office will give a due date for reply. If you do not reply by that due date your application will be considered abandoned.

Examination

The first step in this phase of the process is the classification of your application according to the particular type of article to which it relates. This is followed by a

formal assessment by an examiner who will study your description and drawings or photographs. These will then be compared with previously registered Canadian designs and designs published anywhere in the world to ensure that your design is original and registrable. Your design cannot be the same or similar to a design already applied to a similar article of manufacture. The wording of the description will also be considered to see that it accurately and adequately describes the design features shown in the drawings. Following this assessment the examiner will either allow (approve) the application for registration or issue a report. The report will outline the examiner's findings and tell you what information or amendments are required.

Amendment

If the examiner does express objections about your application, you should respond by providing the requested information or making the suggested amendments. Do not think that you must abandon your application simply because an objection has been raised. If you do not understand the report completely, call the examiner for clarification. The telephone number will be given on the report. You will have four months to reply to the report, otherwise

your application will be considered abandoned. If this occurs, you can request that your application be reinstated and include a reply to the examiner's report.

Appeals

If you do not rectify deficiencies in the application or overcome any outstanding objections raised in the examiner's report(s), your application will be deemed unregistrable in a final report issued by the Office. You may appeal this final report to the Patent Appeal Board which will make recommendations to the Commissioner of Patents who will either reverse the Office decision or reaffirm it in a final rejection. If you are still not satisfied, you may appeal the final rejection to the Federal Court of Canada whose decisions are appealable, in turn, to the Supreme Court of Canada.

Conflicts

Should different people apply to register essentially the same design, the Industrial Design Office will examine the applications on a first-come, first-served basis. The application with the earlier filing date (either the Canadian filing date, or the Convention priority date, if filed earlier in another country) will be registered.

Requests for delayed registration

It is possible that you may want to delay registration. For example, you may wish to allow time to market or file your design outside Canada. In this case, you should inform the Office in writing. You may exercise the option to delay registration at the time of filing your application or at any time before it is registered.

proprietor or by the proprietor's agent and may be made at any time during the first five-year period. After the five-year point, a six-month grace period exists during which maintenance may still be requested but this requires payment of an additional fee. Your request should identify the registration by number, title and name of proprietor. (For details about Fees, see page 15.)

Registration

Once approved by the examiner your design will be registered as soon as possible provided you have not requested delayed registration. You will receive a certificate of registration which includes the completed application form and the drawing(s) of the registered design. This certificate is evidence of ownership and the originality of your design and gives you the exclusive right to make, import for trade or business, rent or sell or expose for sale or rent in Canada, any article in respect of which the design is registered and to which the design is applied.

Duration

Registered designs are valid for ten years from the date of registration subject to payment of a maintenance fee. That fee shall be paid by the registered

Marking a product

You do not have to mark your design in order to indicate that it is registered as a design, but marking does give you extra protection. The proper mark is a capital "D" inside a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.

If your product is marked in this way, a court could award a remedy, such as financial compensation, in the event that someone is charged and found to be "infringing" (i.e. violating) your design. If there is no such mark, the court cannot award a remedy other than forbidding the other party from using your design (an "injunction").

Enforcing your rights

As proprietor, you may take legal action against anyone who infringes your design in Canada. It is your responsibility to take such action and you must do so within three years of the alleged infringement. The Industrial Design Office will not assist in legal proceedings on your behalf or police your rights in any way.

Marketing rights

As the proprietor of a registered industrial design, you have the exclusive right in Canada to

make, import for trade or business, rent or sell a product incorporating that or a similar design. You may also sell all or some of your rights to others (this is referred to as an assignment) or, you can simply authorize others to use the design subject to stated conditions (this is referred to as a licence).

Assignments

An "assignment" occurs when you sell all or part of your rights in the design permanently to another party. This party, or "assignee," assumes your ownership rights to make, import for trade or business, rent or sell, etc., products incorporating the registered design and to authorize others to do so. Usually, the arrangement involves an exchange of money. The assignment must be in writing but there are no prescribed forms for this. You may wish to seek the assistance of a lawyer in the preparation of assignment documents.

The new owner should ensure that the assignment is recorded with the Industrial Design Office. This is done by sending in a copy of the assignment document along with the fee. (For details about Fees, see page 15.)

Recording the assignment allows the new owner to sue for damages if anyone infringes the design.

Assignments may be recorded against pending or registered designs. When recorded against a pending design, a new application form in the name of the new owner must be filed.

Licences

In some cases financial benefit can come from licensing the design. When you license your design, you allow someone else to use it in accordance with the particular terms and conditions set out in the licence agreement which are negotiated between the parties. In this case you retain ownership and, you can, in some instances, license more than one party. You may, for example, license one party for Western Canada, another for Ontario and Quebec and still another for the Maritimes. Similarly, you could have an exclusive licence with one party for the first five years and another licence with a different party for the second five-year period. As with assignments, licences should be registered.

You may wish to seek the advice of a lawyer if arranging a licence agreement.

Note: If you wish to seek out Canadian manufacturers who might be interested in buying, licensing or leasing your design rights, two publications would be useful: the *Canadian Trade Index*,

issued by the Canadian Manufacturers' Association, Toronto; and *Fraser's Canadian Trade Directory*. Both are available in public libraries.

Registration outside Canada

Registering your design with the Canadian Industrial Design Office gives you exclusive rights in Canada only. To enjoy similar rights abroad, you must apply for them in each country separately. Most industrialized countries have equivalent industrial design protection. A list of our foreign counterparts is available from the Client Service Centre.

The United States uses the term “design patent” to describe what roughly corresponds to the Canadian registered industrial design. Be careful not to confuse U.S. design patents with utility patents for inventions.

Procedures for obtaining international design rights are partially governed by an international treaty called the *Paris Convention for the Protection of Industrial Property*. The *Paris Convention*, which has some 90 member countries, including Canada, allows applicants to invoke what is called “convention priority”. This means that someone who has filed for design registration in one Convention country has six

months in which to file an application for the design in another country and be accorded the same rights as if he or she had filed in the second country on the original filing date.

Suppose, for example, you apply to register a design in Canada on January 5, 2000. You then have until July 5, 2000, to file for design rights in any other Convention country and claim convention priority in that country.

It is important to note that in some countries your application could be rejected if you or someone else has previously registered the design. To assist owners of designs in Canada in avoiding this unusual situation, the Canadian Industrial Design Office gives applicants the option of delaying registration so that their application in another country can proceed at the same time as their application in Canada.

FOR MORE INFORMATION

The *Industrial Design Act* and *Industrial Design Regulations* detail the regulations that govern design rights. For electronic access: <http://canada.justice.gc.ca>

To obtain paper copies, contact:

Canadian Government
Publishing
Public Works and Government
Services Canada
Ottawa, Ontario
K1A 0S9

Tel.: (819) 956-4800
1-800-635-7943
Fax: (819) 994-1498

or any bookstore that sells
federal government publications.

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You can also consult or obtain guides similar to this one on other kinds of intellectual property (e.g. patent, trade-mark, copyright, and integrated circuit topography), on our Web site or directly from the Client Service Centre. It may be useful to consult these guides to ensure that your work can be protected under the *Industrial Design Act* rather than copyright, trade-mark or patent laws.

For more information contact us through the CIPO Web site or contact the nearest regional Industry Canada office (shown in the blue pages of your telephone directory), or write to:

Client Service Centre
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9

Should you wish to obtain information on Industrial Design by telephone, call the Client Service Centre at (819) 997-1936.

Fee Schedule

1. Examination of an application to register a design pursuant to subsection 4(1) of the Act _____ \$ 160
2. Maintenance of a registration of a design pursuant to subsection 18(1) _____ \$ 215
3. Supplementary fee for the application for maintenance of a registration of a design pursuant to subsection 18(2) _____ \$ 35
4. Examination of an application to register an assignment, or any other document affecting a design, including registering the assignment, or other document and issuing a certificate of registration thereof pursuant to subsection 13(1) of the Act
 - (a) for the first design referred to in the assignment, or in the other document; and _____ \$ 35
 - (b) for each additional design referred to in the assignment, or in the other document _____ \$ 15
5. Providing copies of or extracts from the Register of Industrial Designs, or copies of certificates, drawings, drawn copies of designs or other documents
 - (a) for each photocopied page; and _____ \$ 0.50
 - (b) for each typed page _____ \$ 5
6. Certification of documents _____ \$ 15

NOTE: YOU DO NOT NEED TO ADD ANY TAXES TO THESE FEES.

APPENDIX A - COMMON QUESTIONS ABOUT INDUSTRIAL DESIGNS

Q1. What is an industrial design ?

A. An industrial design is the features of shape, configuration, pattern or ornament (or any combination thereof) applied to a finished article. It may be, for example, the shape of a table or the ornamentation on the handle of a spoon. The article can be made by hand, tool or machine.

Q2. Must I register my industrial design in order to be protected ?

A. Yes, there is no protection without registration. Once registered, industrial designs are available for public inspection. Keep in mind that it is best to apply for registration before marketing your product. If your design is an artistic work, it is automatically protected by a copyright, and you can register it as such. However, in most cases if you use the design as a model or pattern to produce 50 or more manufactured articles, you can protect it only by an industrial design registration.

Q3. How long does registration last ?

A. Obtaining registration for an industrial design will give you exclusive rights for a period of ten years from the date of registration, subject to payment of a maintenance fee during the first five years.

Q4. What cannot be protected by an industrial design ?

A. The following cannot be protected:

■ a manufacturing process;

■ functional features of an article;

■ a principle of construction, or how an article is built;

■ the materials used in the construction of an article;

■ the useful purpose the design is intended to serve or does serve;

■ colour per se; or

■ ideas.

Q5. Can I register my design as an artistic work under the Copyright Act ?

A. If your design was originally created as a work of art, it would have been protected automatically under the Copyright Act. But once you use it, or intend to use it, as a model or pattern to produce more than 50 single useful articles or sets of articles, in most cases it is considered to be an industrial design, which can only be protected under the Industrial Design Act. Since the legal distinction is a fine one, it is advisable to seek legal advice on this matter (as there are some exceptions to the preceding).

Q6. If I register my design in Canada, am I protected in other countries ?

A. No. You can obtain protection in other countries only by filing in each country separately.

Q7. Is there a time limit for filing an application for registration ?

A. No, unless there has been "publication" (i.e. the design has been made public or offered for commercial sale or use anywhere in the world). In that case, you must file an application within twelve months of the publication date.

Q8. What do I need in order to apply for industrial design registration ?

A. You should send in a completed application form, at least one drawing or photograph and the fee. Your application must be in accordance with the form entitled "Application for Registration of a Design," which is included in Appendix B of this guide. Electronic filing is also possible via our Web site.

Q9. What type of description do I need to include ?

A. The description does not have to detail every aspect of the design, but it must state clearly what the design is and what its original features are. You should describe the visual aspects of the design only, i.e., shape, configuration, pattern or ornament (or any combination thereof). Do not refer to how the article functions or performs. For a more detailed explanation of descriptions consult the "Office Practice Notice on Descriptions" available on the Web site or from the Client Service Centre.

Q10. What type of drawings or photographs are necessary ?

A. *Whether you submit drawings or photographs, they must be in black and white, on good quality paper or photographic paper respectively, at least 21 cm x 28 cm (8" x 11") and not more than 22 cm x 35 cm (8 1/2" x 14"). They must show the design features clearly and be easy to reproduce by photography, electrostatic processes, photo offset and microfilming.*

Q11. If I have a registered design, do I have to put any marking on the articles to indicate this ?

A. *Marking is not required. However, it is helpful in the event of a court proceeding. If there is no mark, the court cannot award a remedy other than an injunction, which will prevent further infringement on your design. The proper mark is a capital "D" in a circle and the name, or abbreviation thereof, of the design's proprietor on the article, its label or packaging.*

Q12. If I see a good design outside Canada and it does not appear to be on the market in Canada, can I register that design under my name here ?

A. *Yes, if you have acquired ownership of the design and it has not been published anywhere in the world for more than one year.*

Q13. How will the Industrial Design Office know if I did not originate the design ?

A. *The examiner searches through records of registered Canadian designs and published designs from any source to determine whether anyone else already owns the design, or one so similar that yours would be considered an imitation. If so, your application will not be acceptable for registration. If the search does not disclose a similar design, your declaration of originality will be accepted and the design registered provided all other requirements are met. It should also be noted that the courts have the power to overturn an invalid declaration at a later date.*

Q14. Can anyone do a search through the Industrial Design Office records to see what has been registered previously ?

A. *Yes, anyone can conduct a search free of charge. All materials are located in the search room at the Client Service Centre, in Hull, Quebec. Staff will give you the basic information you need to do the search. You may also obtain copies of drawings and other documents at a nominal fee (see the previous section entitled Fees).*

Q15. May non-Canadians register their designs in Canada ?

A. *Yes, provided that Canadian requirements are met.*

Registrations of other countries offer no protection in Canada although they may be used as prior art when determining originality.

Q16. If I sell or purchase rights to a design, do I need to inform the Industrial Design Office ?

A. *It is advisable to register the sale of rights, or "assignment," as it is known, with the Industrial Design Office. Many legal text writers have expressed the opinion that registration of an assignment would be necessary before the new owner could sue anyone for infringing the design.*

Q17. Would the Industrial Design Office stop someone else from infringing my design ?

A. *No. This responsibility rests with the owner of the design. You must start any legal action within three years of the alleged offence.*

Q18. Can I get help in filing an application for industrial design protection ?

A. *Yes. Information on procedures for filing an application can be obtained from the CIPO Client Service Centre. Also, there are registered patent agents you can consult who have experience in this area. Look for them in the yellow pages of the telephone book under "Patent Agents", or write to the CIPO Client Service Centre (see section entitled "For more information").*



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Hull (Québec) K1A 0C9
Téléphone : (819) 997-1936
Télécopieur : (819) 953-6977
Internet : www.opic.gc.ca

Copyright and Industrial
Design Branch
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-6977
Internet : www.cipo.gc.ca

**DEMANDE D'ENREGISTREMENT
D'UN DESSIN INDUSTRIEL**

**APPLICATION FOR REGISTRATION
OF AN INDUSTRIAL DESIGN**

Le demandeur,

The applicant, _____
(nom du demandeur - name of applicant)

dont l'adresse complète est
whose complete address is _____

demande l'enregistrement d'un dessin pour un(e)
hereby requests registration of a design for a(n) _____

(désignation de l'objet - title identifying article)

dont il est le propriétaire.
of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage
lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the
time the design was adopted by the first proprietor.

Description du dessin :
Description of the design:

Canada

OPIC - CIPD 45 (02-2002)

OPIC  CIPD



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**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

À remplir seulement si le demandeur a un mandataire
To be completed only if an applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
**REPRÉSENTANT AUX FINS DE
SIGNIFICATION** au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Hull (Québec) K1A 0C9
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Canada

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Industry Canada

Dessin industriel Industrial Design

Certificat d'enregistrement

Certificate of Registration

N° d'enregistrement :
Registration No.:

Document :
Document:

Ayant trait
Affecting:

Membre du personnel du bureau du commissaire aux brevets /
Officer of the Office of the Commissioner of Patents

Date

Canada

OPIC - CIPO 32 (02-2002)

OPIC  CIPO

Abandonment – An application for an industrial design will be considered abandoned if the applicant fails to reply within the specified time to any report which sets out objections to registration.

Application – The formal request for an industrial design. The complete application has five main elements: description, title, drawings or photographs, declaration and fees.

Assignment – The permanent transfer of design rights from the owner to another party.

Canadian filing date – The date your completed application is officially received at the Industrial Design Office (not to be confused with the registration date at the end of the process).

Canadian Intellectual Property Office (CIPO) – The federal government agency responsible for industrial designs and other forms of intellectual property, including patents, trade-marks, copyrights and integrated circuit topographies.

Certificate of registration – Official confirmation that your design has been registered.

Convention priority – A protocol that gives you six months to file for design registration outside Canada after your Canadian filing date.

Convention priority applies in countries that have signed the *Paris Convention* (see definition below).

Copyright
Provide protection for artistic, dramatic, musical or literary works (including computer programs), and three other subject-matter known as: performances, sound recordings and communication signals.

Declaration – Formal statement that you are the proprietor (see definition) of the design and that, to your knowledge, no one else was using the design when you created it.

Description – A description is a basic requirement of an application for an industrial design. It identifies the features of shape, configuration, pattern or ornament that comprise the design, and indicates whether the design resides in the entire article or a portion.

Design patent – The term used in the United States to describe a form of protection similar to that of industrial design protection in Canada.

Drawings – Drawings or photographs disclose the industrial design and are a basic requirement of a design application.

Examination – The process through which the Industrial Design Office determines

whether a design warrants registration. The main objective is to determine that the design is indeed design subject-matter, that it is original and that the documentation meets the requirements of the Act and Regulations.

Industrial design – The visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

Industrial Design Act – Legislation governing registration and ownership of industrial designs in Canada.

Industrial Design Office – The office within the Canadian Intellectual Property Office responsible for registration of industrial designs.

Infringement – Violation of industrial design rights through unauthorized use of a design.

Licensing – The granting from the owner of a design to another party, certain rights related to the design. This may include such things as the right to use, manufacture and sell the design.

Maintenance fee – Fee required in order to maintain the rights to an industrial design for a second five-year period.

Marking – Signalling that a design is registered by placing a capital “D” in a circle – along with the name, or abbreviation thereof, of the design’s proprietor on the object to which the design has been applied, or to its label or packaging.

Paris Convention for the Protection of Industrial

Property – An international treaty on intellectual property signed by some 90 nations, including Canada.

Patent – Covers new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention.

Prior art – The body of registered industrial designs or other published designs including catalogues, manuals and other publications throughout the world relevant to the application for registration of a design.

Proprietor – The proprietor of an industrial design is the owner of the design. This can be the person who created it or who paid to have it created or who bought the design rights from the owner.

Publication – Publication of a design is the act of making it public or available for commercial sale or use anywhere in the world.

Registration – The granting of formal recognition of an industrial design by the Industrial Design Office. This provides protection against imitation and unauthorized use of the design effective from the date of registration.

Representative for service –

A person in Canada appointed by the applicant or registered proprietor to receive documents on his/her behalf.

Search – The act of searching through registered and published designs in the Industrial Design Office records to verify whether a design is original.

Trade-mark – A word, symbol or design (or a combination of these), used to distinguish the wares or services of one person or organization from those of others in the marketplace.



**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

Direction du droit d'auteur
et des dessins industriels
Place du Portage I
50, rue Victoria
Hull (Québec) K1A 0C9
Téléphone : (819) 997-1936
Télécopieur : (819) 953-6977
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Design Branch
Place du Portage I
50 Victoria Street
Hull, Quebec K1A 0C9
Telephone: (819) 997-1936
Facsimile: (819) 953-6977
Internet: www.cipo.gc.ca

Certificat de dépôt de dessin industriel - Industrial Design Filing Certificate

Nom et adresse du demandeur ou du mandataire
Name and address of applicant or agent

--

Personne-ressource - Contact person

N° de téléphone - Telephone no.

N° de référence du client - Client's reference no.

Nom du demandeur - Name of applicant

Pays - Country

Province (Si le pays est le Canada - If the country is Canada)

Objet fabriqué - Article of manufacture

☐ Le demandeur revendique une priorité conventionnelle fondée sur la demande suivante produite à l'étranger :
Applicant claims convention priority based on the following foreign application:

Pays - Country

Date de dépôt - Filing date
A - Y M J - D

N° de la demande - Application no.

À REMPLIR PAR LE BUREAU - TO BE COMPLETED BY THE OFFICE

N° de la demande - Application no.

Date de dépôt - Filing date
A - Y M J - D

Priorité conventionnelle revendiquée
Convention priority claimed

☐

Oui
Yes

☐

Non
No

Approuvée - Approved

☐

Oui
Yes

☐

Non
No

Remarques - Remarks

Validation du Bureau - Office validation



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Government
Publications

How Your Industrial Design Application is Processed

You can obtain further information
concerning your application for
registration by:

Telephone: (819) 997-1936

Fax: (819) 953-6977

If you have already obtained a
registration number from our Office
and you would like further
information concerning your file,
please indicate your registration or
file number when making any new
request for service relating to your
file.

Nota: A large number of applicants
seeking Industrial Design protection
are represented by a registered
patent agent. When an agent has
been appointed, the Office will
address all correspondence to the
agent.

Enquiries concerning the various
phases of prosecution should,
therefore, be directed to the
appointed agent.

Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Formalities (processing)	If the application is complete and the prescribed fee paid, a filing date and application number are assigned and file and index cards are created. The application will then proceed to classification and examination.	A filing certificate will be sent showing the date of filing and the application number.	... within 4 weeks of receipt of application.	CAN\$160 Examination fee payable upon filing.
	If the application is incomplete (missing declaration, title, description, fees or drawings), the application is placed on hold and you will not receive a filing date until it is complete.	A report will be sent describing why the application is incomplete.	... within 4 weeks of receipt of application.	
Classification	If it is clear what the article is, your application is classified according to the <i>Canadian Industrial Design Classification Manual</i> .	No notification is sent to the client.		none
	If it is not clear, the application is placed on hold until more information can be obtained from you about the article.	A report will be sent requesting more information.	... within 2 weeks of preliminary classification.	none
	If the application does not constitute registrable subject-matter, classification and examination do not take place.	You will be advised by phone or by letter and given the opportunity to submit arguments or withdraw the application.	... within 1 week of classification.	none
Examination	<p>A search of registered designs and published art is conducted, the design is assessed to determine originality, and the application is checked for conformity to the requirements of the <i>Industrial Design Act</i> and <i>Rules</i>.</p> <p>If all requirements are met, the application is allowable for registration. (see Allowance)</p> <p>If the application is not acceptable, the examiner will explain the reason(s). You may respond by making amendments or by submitting arguments against the examiner's objections. Such submissions are reviewed by the examiner and if the application is still not acceptable, the examiner will contact you again to explain the reasons.</p>	<p>No notification is sent to the client.</p> <p>You will receive an examiner's report.</p>	<p>... within 9 months of receipt of application.</p> <p>A first report will be issued within 9 months of receipt of application.</p> <p>Subsequent examiners' reports will be issued within 1 month of receipt of your amendment or comments.</p>	<p>none</p> <p>No fee is required for amendments.</p>

Industrial Designs

Stage	What happens to your application	How we'll inform you	... and when	Fees
Allowance	<p>If all requirements are met, the application is allowable for registration. (An international treaty requires that the Office not register before the expiration of a 6-month period from the filing date or the priority date where priority is claimed. Thus, in cases of infringement where the application has been allowed before the 6-month date, the file will not be registered until the 6-month period has elapsed.)</p> <p>A final pre-registration search will be done to ensure that there is not a similar pending design with a prior date of filing.</p>	<p>Notification is given only upon request, in which case, you would be notified by telephone.</p> <p>If such prior art exists, you will be notified by an examiner's report.</p>	<p>On request, a telephone call will be made within 1 day of request.</p> <p>... within 1 month of the allowance date.</p>	none
Final report	<p>If objections by the examiner are not overcome by your arguments, the examiner will advise you that the application remains unacceptable for registration and that you may request a review by the Patent Appeal Board.</p> <p>(If your appeal is rejected, you may take your case to the Federal Court within a limited time.)</p>	You will receive a final report.	... within 1 month of receipt of your last submission.	
Registration	The processing clerk assigns a registration number and the certificate of registration is prepared. The certificate and attachments are microfilmed before being sent to you.	The certificate of registration will be mailed.	... within 2 weeks from the registration date.	none
Abandonment	If you fail to respond to a report by the specified deadline, the file will be retrieved and your application will be considered abandoned.	A notification of abandonment will be issued.	... within 2 weeks of the file being identified for abandonment.	none
Reinstatement	<p>If you write to request reinstatement of an abandoned application and respond to any outstanding report, the file is retrieved and put back in process.</p> <p>The request for reinstatement must be received within 6 months of the date of abandonment.</p>	No notification is sent to the client.	Reinstatement will occur within 2 weeks of receipt of the request in the Office.	none
Assignment	Assignments may be processed during or after examination and registration. The chain of title and assignment document are verified and a transaction certificate is prepared.	The transaction certificate will be sent out with the assignment document.	... within 1 week of receipt of the assignment.	\$35
Request for delay of registration	If you wish to delay registration in order to allow filing in another country you should advise the Office in writing. A note will be placed on the file and the examination process continues. If the application is in an allowable state, it will be held from registration for a specified period of time.	Notification will only be sent upon request.	... within 1 week of receipt of the request.	none
Request for extension of time to respond to a report	Upon receipt of your written request, an extension of up to 4 months will normally be granted. The report will be stamped indicating an extension date.	You will receive a stamped copy of your letter confirming the extension date.	... within 1 week of receipt of the request.	none
Request for accelerated action	Upon receipt of your written request, which provides details regarding the alleged infringement, the application will proceed to examination immediately for action. (see Allowance regarding earliest possible registration)	You will be advised by telephone if the examination will be accelerated.	... within 1 week of receipt of the request.	none
Maintenance fees	<p>Your registration will be maintained upon receipt of the maintenance fee. This will continue the registration for the remaining 5 years of the 10-year period.</p> <p><i>(please make all cheques payable to the Receiver General for Canada)</i></p>	You will receive a maintenance certificate.	... within 1 week of receipt of the fee.	<p>CAN\$215 If the request is received within 5 years of registration date.</p> <p>CAN\$250 If the request is received in the 6 months following the 5-year period.</p>

A more extensive Guide to Industrial Designs is available free of charge from:

IC no. 11370 E
IC no. 11371 F

Publications Centre
Canadian Intellectual Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Hull, Quebec
K1A 0C9

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À remplir seulement si le demandeur a un mandataire
To be completed only if an applicant has an agent

Nom du mandataire / Name of agent
Adresse du mandataire / Address of agent

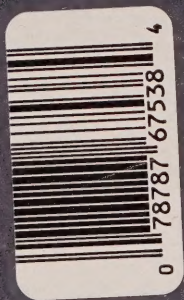
Lorsque le demandeur n'a pas
d'établissement au Canada, le
nom et l'adresse de son
**REPRÉSENTANT AUX FINS DE
SIGNIFICATION** au Canada
doivent être indiqués.

If an applicant has no place
of business in Canada, the
name and address of a
REPRESENTATIVE FOR SERVICE in
Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service
Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

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